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165-188

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~320~~. 63

MRS. LILLIAN W. EGAN AND HUSBAND, PLAINTIFFS IN ERROR,

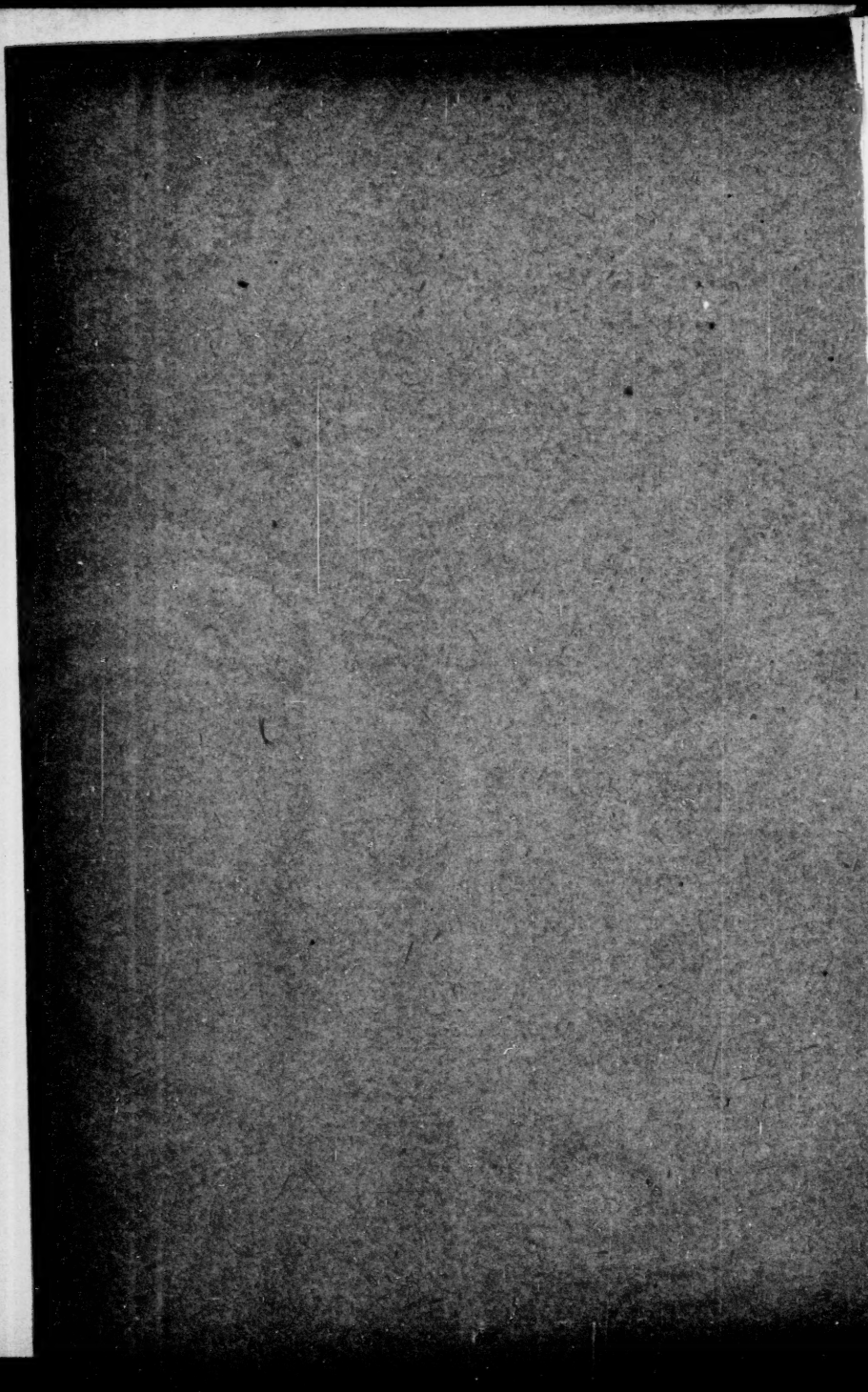
vs.

A. HART, H. B. RICHARDSON, AND F. M. KERR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JANUARY 26, 1894.

(15,492.)



(15,492.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 320.

MRS. LILLIAN W. EGAN AND HUSBAND, PLAINTIFFS IN ERROR,

vs.

A. HART, H. B. RICHARDSON, AND F. M. KERR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 STATE OF LOUISIANA:

Supreme Court of the State of Louisiana, Sitting at Shreveport, Louisiana.

Mrs. LILLIAN W. EGAN & HUSBAND, Appellant-,
vs.
ARCHIE HART *et al.*, Appellees. } No. 11376.

Transcript of Appeal from the First District Court, Parish of Caddo, Louisiana.

Filed Nov. 6, 1893.

Proceedings in the First Judicial District Court, Parish of Caddo.

Petition.

To the honorable judge of the first judicial district court, Caddo parish, Louisiana:

The petition of Mrs. Lillian W. Egan, wife of William L. Egan, and of said William L. Egan, who appears for the purpose of joining, aiding, and authorizing his said wife herein, both of Caddo parish, La., with respect represents that she, the said Mrs. Lillian W. Egan, is the owner of a valuable plantation on Red river, in Caddo parish, known as Grigsby's Island, formerly called and known as Anderson's Island; that said plantation is bounded on one side by Red river, and on another and opposite side by Bayou Pierre, a stream running out of Red river; on another side by a stream known as Old river, also running out of Red river, and on another and opposite side by another stream, also known as Old river, running out of Red river and emptying into the first-named stream before it passes petitioner's land and some distance, say one-
2 half mile, before reaching the point of the proposed dam or dike hereinafter spoken of; that said proposed dam across Bayou Pierre is being built a long distance, say one and one-half miles, from where Bayou Pierre lets out from Red river, as is shown by a map or plan hereto annexed and made part of this petition.

Petitioner also avers that said land is also otherwise described as follows:

Lots No. 1, 3, 4, 5, 6, 7, section 4.
S. E. ¼ of S. W. ¼.
Lots No. 6, 7, section 5.
" 1, 2, " 8.
" 1, 2, 3, 4, 5, 6, 7, 9, section 9.
S. E. ¼ of S. E. ¼.
Fractional S. W. ¼ section 10.
Lots Nos. 1, 2, " 15.

All in township 17 N., range 13 W., and containing about eight hundred acres.

1—320

She avers that said plantation is valuable, being well worth the sum — twenty-eight thousand dollars, and is well provided with a dwelling, stables, cotton gin, cabins, levees, and other improvements.

That the said Bayou Pierre serves as a natural drain to said land, and has done so from time immemorial; that said stream is a natural outlet from Red river, and in times of high water carries off a large amount of surplus water, and with this natural outlet said plantation, with the existing levees upon it, is above overflow at any ordinary stage of the water in Red river; that said land is in a high state of cultivation, producing annually large crops of cotton, corn, and other products.

3 Petitioner now avers that A. Hart, of Caddo parish, and Henry B. Richardson, of the parish of Orleans, and F. M. Kerr, pretending to act as chief engineer and engineer of the State board of engineers, and other parties not known to petitioner, have combined and conspired to build a dam or dike across said Bayou Pierre at a point far down said stream, below the point where it leaves Red river and below the point where the second stream above mentioned, also called Bayou Pierre, joins the said first-named stream called Bayou Pierre and below the land of petitioner, say, a distance of about one and one-half miles from the opening of Red river, and about one-quarter mile from the lowest portion of the land of petitioner; that said dam or dike is to be so constructed as to close completely said Bayou Pierre and prevent the running off of the surplus water from Red river below the point where said dam is built.

That said A. Hart and said Kerr and said Richardson and the other parties to petitioner unknown have openly and publicly announced their intention to close and dam Bayou Pierre and prevent the running of water through said bayou below said point; that they have subscribed monies and collected and undertaken to collect monies to pay for said work, prepared and provided teams, implements, and laborers, and actually begun the work of closing and damming the said bayou.

Petitioner alleges that the said Hart was employed almost wholly by private parties to do the said work; that the funds with which to do the said work were supplied or are to be supplied by interested private parties who own or occupy lands below petitioner on Bayou Pierre and on Red river, who, from no public motives, but for their own selfish interests, have entered into this said combination to close said bayou.

4 Petitioner avers that any pretended contract by said Hart or other person to do or perform said work with the State or the officials was a mere pretext or subterfuge, and intended as a cloak to cover their illegal acts and with the hope to shield themselves from the legal consequences of their wrongful acts.

Petitioner now specially avers that if said acts are claimed to be done by virtue of any contract with the State or its officials and in accordance with law or any act of the legislature that may heretofore authorize the State board of engineers to let contracts for the

building public levees, etc., said board of engineers have no power to close or contract for the closing of such a bayou or natural outlet as said Bayou Pierre is, and, moreover, specially avers that since the passage of act No. 74 of 1892 the said board of engineers are without power to advertise for bids, receive bids, let contracts for building public levees in Caddo parish, but that said power is lodged exclusively in the board of commissioners of the Caddo levee district of Louisiana; that if said board of engineers have advertized for bids and have let a contract or contracts for building a public levee in Caddo parish and for closing said Bayou Pierre, it has been since the passage of said act 74 of 1892, and they were without authority so to do and have done so without the advice or approval or authority of the board of commissioners of the Caddo levee district.

That if said authority is claimed by virtue of sec. 18 of land act No. 74 of 1892, petitioner avers that said section of said act is unconstitutional, null, and void if it gives the State engineers other or greater powers than they heretofore had, and that under the powers they heretofore had they were without power to close said Bayou Pierre.

Petitioner specially avers that all of said acts are in violation of the law and of petitioner's rights, and the said combination an unlawful one to destroy petitioner's property or to greatly damage it.

Petitioner now avers that the effect of closing Bayou Pierre, as alleged, as intended and already begun, will be to check the waters that would otherwise harmlessly run off in a natural channel from Red river and turn them back into Red river alongside of petitioner's land; that it would cause her land to overflow at a much lower stage of water in Red river than hitherto, say 12 inches; that, to prevent overflow of her plantation before the waters of Red river reached a stage at least twelve (12) inches lower than the stage at which she is now exempt from overflow, she, if said bayou be closed, would be compelled to add to her levees already built and to build a new and additional levee at a cost of sixty-three hundred dollars; that her place would have to be entirely surrounded with high levees, which would be costly and expensive to maintain and keep in repair, and if done would still leave her plantation like a basin in which rain water and seepage water would stand with no way of running off; that it will be difficult or impossible to rent said plantation if said bayou be closed; that already the present tenants have notified petitioner of an intention not to remain on the place next year if the bayou be closed; that the return of said waters to Red river will probably cause the banks along said Old river to cave, which would destroy her said plantation.

That the effect of closing said Bayou Pierre will be to damage, if not to entirely destroy, petitioner's plantation; that the direct and immediate damage arising from said closing of said bayou will amount to at least twenty thousand ($20,000) dollars; that the said acts will damage petitioner irrevocably, and that the said defendants

will immediately proceed to carry out said unlawful purpose
6 and close said bayou, and have in fact begun to do so, and will continue unless restrained by an order of your honorable court.

Petitioner avers that she already has been damaged to the extent of and in the sum of six thousand dollars by said unlawful combination and by said unlawful acts, of which sum one thousand dollars is for attorney's fees to obtain the suing out and the prosecution of this injunction and five thousand dollars for the present and immediate damage she has sustained by the open threats and announced purpose of said persons to close said bayou and by the actual beginning of said work in the depreciation of value of said place already in consequence thereof and by the demoralization of the laborers and tenants upon said place; that its rental value and its selling value have already in consequence of the aforesaid been lessened and reduced in said sums.

Wherefore, premises considered, petitioner prays that said F. M. Kerr and said H. B. Richardson and said Hart be cited to answer hereto, and that writs of injunction issue, restraining and inhibiting said named parties and all persons acting under and by virtue of employment or direction from said parties from closing said Bayou Pierre or from any further acts in pursuance of such intention, and from building a dam or dike across said bayou, and from employing or inducing others to do so or any one else to do so for them.

She prays that after all legal delays and due proceedings had that there be judgment making said injunction perpetual, and that she do have and recover of and from said named defendants *in solido* the full amount of damages above claimed, and that they be compelled to remove any obstructions they may have placed or caused to be placed in said Bayou Pierre and to undo whatever they
7 may have done toward closing said bayou or toward building a dam or dike across same.

She prays for an order granting said injunction, for all orders and decrees necessary, for costs, and for general and special relief.

F. G. THATCHER.

STATE OF LOUISIANA, }
Parish of Caddo. }

Personally came and appeared before me the undersigned authority, Mrs. Lillian W. Egan, who, being by me duly sworn, deposes and says that all the facts and allegations of above and foregoing petition are true.

LILLIAN W. EGAN.

Sworn to and subscribed before me this the 28th day of September, A. D. 1892.

HOYLE TOMPKIES,
Not. Pub. in and for Caddo Parish, La.

Let writs of injunction issue as prayed for on plaintiff's giving bond in the sum of twenty-five hundred dollars.

This done and signed in Caddo parish, La., the 28th day of September, A. D. 1892.

S. L. TAYLOR,
Judge 1st Jud'l Dist. of La.

(Endorsed:) Filed Sept. 28, '92. F. A. Leonard, clerk.

Injunction Bond.

STATE OF LOUISIANA, }
Parish of Caddo. }

Know all men by these presents that we, Lillian W. Egan, as principal, and C. H. Ardis and J. G. McWilliams, as security, are held and firmly bound unto A. Hart and H. B. Richardson
8 and F. M. Kerr in the full sum of twenty-five hundred dollars; for payment of which, well and truly to be made, we bind ourselves, our heirs and legal representatives, firmly and *in solido* by these presents. Dated at Shreveport, La., this 28th day of September, A. D. 1892. The condition of the above obligation is such that whereas the above-bounden Lillian W. Egan has applied for and obtained an order for a writ of injunction directed against H. B. Richardson and A. Hart and F. M. Kerr in a suit this day filed, entitled Lillian W. Egan *vs.* A. Hart *et al.*, No. 4048 on the docket — first district court, Caddo parish, La.:

Therefore, if the said Lillian W. Egan shall well and truly pay and satisfy such damages as the said A. Hart, Richardson, and Kerr may sustain or recover against her in case it should be decided that the writ of injunction was wrongfully obtained, then this obligation to be null and void; otherwise to remain in full force and effect.

LILLIAN W. EGAN,
Authorized by me, W. L. EGAN.
C. H. ARDIS.
J. G. McWILLIAMS.

(Endorsed:) Filed Sept. 28th, 1892. F. A. Leonard, clerk.

Writ of Injunction.

In the First District Court, Caddo Parish, Louisiana.

Mrs. LILLIAN W. EGAN }
vs. } No. 4048.
A. HART *et als.* }

The State of Louisiana to A. Hart, Greeting:

You are hereby enjoined, restrained, and strictly prohibited from further proceeding to close or build a dam or dike across Bayou Pierre or from any further acts in pursuance of such inten-
9 tions, and from employing or inducing others to do so, and from permitting any one else to do so for you, until the further orders of our said court in the premises.

Witness the Honorable S. L. Taylor, judge of said court, this 28th day of September, A. D. 1892.

F. A. LEONARD, *Clerk.*

Received the within writ of injunction on Sept. 28th, 1892, at 12 o'clock m., and on same day, at one o'clock p. m., served the same by handing A. Hart in person a certified copy hereof at his place three (3) miles from court-house in Caddo parish, La.

J. E. ROBINSON,
Dep. Sheriff.

(Endorsed:) Filed Sept. 29, '92. F. A. Leonard, clerk.

Petition for Dissolving Injunction.

In District Court, Parish of Caddo, State of Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et al.* } No. 4048.

Now comes Archie Hart, defendant in the above-entitled suit, and respectfully represents that he has a contract with the State of Louisiana for the construction of a public levee on Red river from the hills on the north bank of Bayou Pierre to Dixie plantation, a distance of 2 and ¾ miles, and that this contract includes the filling of said bayou; that petitioner has been enjoined by plaintiff from proceeding with said public work, to his great damage and injury as a contractor. Petitioner shows that the damages alleged by plaintiff are purely prospective and speculative and mostly imaginary, and prays that said injunction be dissolved on petitioner's giving bond and security, as the court may find sufficient, to cover any actual damage or injury that plaintiff may sustain.

Petitioner further prays for notice to plaintiff, and that she be ordered to show cause why said injunction should not be dissolved as prayed for.

LAND & LAND, *Att'ys.*

It is ordered that the plaintiff show cause on the 3rd day of October, 1892, at 10 a. m., in chambers, why the order prayed for in the foregoing petition should not be granted.

Done and signed this Sept. 30, '92.

S. L. TAYLOR,
District Judge.

(Endorsed:) Filed Sept. 30, '92. W. G. Boney, d'y clerk.

Intervention of State.

In 1st Judicial District Court, Parish of Caddo, Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*
No. 4048.

To the Hon. S. L. Taylor, judge of the first judicial district court, parish of Caddo, State of Louisiana:

The petition of the State of Louisiana, herein represented by John R. Land, district attorney of the first judicial district of the State, under instructions from M. J. Cunningham, attorney general, with respect represents—

That petitioner prays leave to file this petition of intervention in the above-entitled suit to protect the interest of the State in the subject-matter of this litigation.

Petitioner avers that the defendants in this suit are a levee contractor of the State of Louisiana and the chief engineer and the assistant engineer of the board of State engineers, and that the works enjoined by plaintiff constitute or are intended to constitute a part of the public levee system of the State.

Petitioner further represents that the board of State engineers in the discharge of their duties recommended the closing of Bayou
11 Pierre at the point complained of by plaintiff, and the construction of a public levee from the hills north of and across said bayou to the Dixie plantation, on Red river, a distance of about $2\frac{3}{4}$ miles, in order to protect the adjacent country from overflow and as a basis of a system of levees to be built as soon as possible. That on said recommendation, accompanied by plans and specifications, bids for the construction of said public work were advertised for according to law, and the bid of the defendant Hart, being the lowest, was duly accepted, and therefore a contract made with him by the governor of the State, in the usual form, for the construction of said levee, and bond and security given by the said Hart and accepted by the State for the faithful performance of his contract according to law.

Petitioner further represents that the contract price of said work is payable out of the general engineer fund of the State of Louisiana, over which the district levee board of Caddo parish has no control, and that the State board of engineers had the right and power under the laws of the State, and more specially under act 60 of 1886, to determine in what portion of the Caddo district its *pro rata* of said fund should be expended and for what work; that said board had and has the exclusive power of locating all levees in said district and of determining what outlets shall be closed or opened; that the powers of said board were not abridged in any manner by act 74 of 1892, but were, for greater —, made exclusive by section 18 of said act; that by the terms of said act it was made the duty of said Caddo district levee board "to provide the means to carry

out the recommendations of the board of engineers" by taxation and assessments, but that these means were intended to be in aid of the general engineer fund, and that said act does not in any
12 way divest the board of engineers of the control of the expenditure of the said fund granted by prior legislature.

Petitioner further represents that whatever damage may be occasioned to plaintiff by said work is "*damnum absque injuria*," and that her said injunction was illegally sued out and should be dissolved with costs; and petitioner joins in the petition and prayer of the defendant Hart for the dissolution of said injunction and bond.

Wherefore petitioner prays for citation to said plaintiff and her husband and, after due proceedings had, for judgment dissolving said injunction and dismissing said suit with costs.

JOHN R. LAND,
District Attorney, 1st Jud'l Dist. of La.

Let the foregoing intervention be filed and the plaintiff and her husband cited to answer the same according to law.

Done and signed in open court on this the 3rd day of October, 1892.

S. L. TAYLOR,
Judge 1st Jud'l Dist. of La.

(Endorsed:) Filed October 3rd, 1892. W. G. Boney, d'y clerk.

Judgment on Application to Dissolve.

District Court, Caddo Parish.

EGAN
vs.
HART *et als.*; STATE OF LA., Intervenor. } No. 4048.

This is an application to dissolve on bond an injunction sued out by plaintiff to restrain the construction of certain public works.

For the purpose of trying the motion all the allegations of
13 fact contained in the petition are to be taken as true—36 A., 918—and the general rule is that where the injury can be made good by the payment of money or where the party complaining may be fully reinstated in the position he may have lost by the act complained of the injunction may be dissolved on bond. 32 A., 1192; A., 772; 37 A., 110.

There are some exceptions to this general rule, which are recognized in the following cases, but plaintiff's case does not fall under any of these exceptions. 33 A., 133, 560; 34 A., 99; 30 A., 970; 37 A., 110, 25; 36 A., 886; 37 A., 11; 39 A., 901.

The petition in this case contains a sworn averment that the acts enjoined will cause plaintiff an irreparable injury, but this is not conclusion of the fact and does not deprive the court which granted the injunction of all discretion in dissolving it on bond. 32 A., 1192; 33 A., 930.

Applying these principles to the allegations of the petition, I find it nowhere alleged that the acts enjoined amount to a trespass, or that the effect of a dissolution of the writ would be to change the possession of immovable property. 33 A., 133, 560; 34 A., 99. On the contrary, the construction of the public works, which is the act enjoined, was being done on land not belonging to plaintiff, and the gravamen of her complaint is that such construction will hereafter cause her injury, the probable amount of which she fixes in dollars and cents.

She alleges that she is the owner of a plantation, well equipped and in a state of cultivation, which is bounded on one side by Red river and on the other three sides by streams running out of Red river, one of which, called Bayou Pierre, is now and has been from time immemorial a natural drain to petitioner's land; that
14 this bayou is a natural outlet from Red river, and that in time of flood in the river it carries off a large amount of surplus water; that with this natural outlet upon her plantation, with its existing levees, — is above overflow at any ordinary stage of water in the river; that defendants are constructing dam across Bayou Pierre at a point distant about one and a half miles from the head of the bayou and about a quarter of a mile from the lowest portion of plaintiff's land, and that this dam is being so constructed as to completely close the bayou and prevent the outflow of the surplus water.

It is further alleged that this dam, if completed, would turn back into Red river the water which escapes through the bayou and cause her land fronting on the river to overflow at a stage of water in the river one foot lower than the stage at which she is now exempt from overflow.

That in consequence of this increase in the height of the water she would be compelled to add to her existing levees and build an additional one at a cost of $6,300.

The petition then sets up a claim for damages, many of the items of which are conjectural and incapable of ascertainment until after the dam shall have been constructed.

But whether they be actual or consequential is a matter of no moment in determining a motion to dissolve on bond, except in so far as they may affect the amount of the bond.

All the injuries set forth in the petition as being likely to result from the construction of this work are compensable in money, and in such cases the law is well settled that the injunction may be dissolved on bond. See 41 A., 827.

It is therefore ordered that the injunction sued out in this case be dissolved on defendant's giving bond, with approved security, in the sum of ten thousand ($10,000) dollars, ac-
15 cording to law.

Dond and signed at chambers this 5th of October, 1892.

S. L. TAYLOR,
Dist. Judge.

(Endorsed:) Filed Oct. 5, '92. F. A. Leonard, clerk.
2—320

Bond on Dissolving.

STATE OF LOUISIANA, }
Parish of Caddo. }

Know all men by these presents that we, Archie Hart, as principal, and Mrs. Mary E. Sharp, Mrs. Cornelia Hart, Miss Mamie Sharp, J. B. Slattery, E. M. Smith, T. C. Johnson, and A. H. Leonard, as security, are held and firmly bound unto Mrs. Lillian W. Egan and husband in the full sum of ten thousand dollars; for payment of which, well and truly to be made, we bind ourselves, our heirs and legal representatives, firmly and *in solido* by these presents. Dated at Shreveport, La., this 5th day of October, A. D. 1892.

The condition of the above obligation is such that whereas the above-bounden Archie Hart has applied for and obtained from the honorable the judge of the 1st judicial district court, parish of Caddo, State of Louisiana, an order dissolving the injunction sued out by the said Mrs. Lillian W. Egan in suit No. 4048 on the docket of said court, wherein the said Mrs. Lillian W. Egan is plaintiff and the said Archie Hart and others are defendants, on condition of giving bond and security in said sum of $10,000, conditional according to law:

Therefore if the said Archie Hart shall restore the property in dispute to the same state in which it was at the moment of issuing the said injunction and shall pay besides to the said plaintiff all damage she may have sustained by the acts enjoined, if a definitive judgment be rendered against him in the said pending suit, then this obligation to be null and void; otherwise to remain
16 in full force and effect.

ARCHIE HART.
MRS. MARY E. SHARP.
her
MRS. CORNELIUS x HART.
mark.
MISS MAMIE SHARP.
J. B. SLATTERY.
E. M. SMITH.
T. C. JOHNSON.
A. H. LEONARD.

Witness as to signature of Mrs. Cornelius Hart:
I. LAMOREE.

(Endorsed:) Filed Oct. 5, '92. F. A. Leonard, clerk.

Writ of Injunction—F. M. Kerr.

In the First District Court, Caddo Parish, La.

Mrs. LILLIAN W. EGAN & HUSBAND
vs.
A. HART *et als.*
No. 4048.

The State of Louisiana to F. M. Kerr, Greeting:

You are hereby enjoined, restrained, and strictly prohibited from further proceeding to close or build a dam or dike across Bayou Pierre or from any further acts in pursuance of such intentions and from employing or inducing others to do so or permitting any one else to do so for you until the further orders of our said court in the premises.

Witness the Honorable S. L. Taylor, judge of said court, this 28th day of September, A. D. 1892.

F. A. LEONARD, *Clerk.*

Received the within writ of injunction on the 3rd day of October, 1892, and served the same by handing a certified copy thereof to F. M. Kerr in person on Oct. 6th, 1892, in Caddo parish, La., within one mile from the court-house.

J. S. YOUNG,
17 *Sheriff Caddo Parish, La.*

(Endorsed:) Filed Oct. 7, '92. F. A. Leonard, clerk.

Writ of Injunction—H. B. Richardson.

In the 1st District Court, Caddo Parish, La.

Mrs. LILLIAN W. EGAN & HUSB'D
vs.
A. HART *et als.*
No. 4048.

The State of Louisiana to H. B. Richardson, Greeting:

You are hereby enjoined, restrained, and strictly prohibited from further proceeding to close or build a dam or dike across Bayou Pierre or from any further acts in pursuance of such intention and from employing or inducing others to do so or permitting any one else to do so for you until the further orders of our said court in the premises.

Witness the Honorable S. L. Taylor, judge of said court, this 28th day of September, A. D. 1892.

F. A. LEONARD, *Clerk.*

Received Saturday, Oct. 8th, 1892, and on the 9th day of October, 1892, I served a copy of the within writ of injunction on H. B. Richardson, defendant herein, in person.

WM. EGAN,
Dep. Sheriff, Parish of Orleans.

(Endorsed:) Filed Oct. 21, '92. F. A. Leonard, clerk.

Amended Petition.

In the 1st District of Caddo Parish.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et al.* } No. 4048.

Now comes the plaintiff, Mrs. Lillian W. Egan, joined by her husband, William L. Egan, and said W. L. Egan, and asks leave of the court to amend her original petition.

18 She alleges that Bayou Pierre, the stream described in original petition, is a navigable stream by nature, and that from time immemorial steamboats and water crafts have navigated said Bayou Pierre and carried freight up said Bayou Pierre to planters living on its banks and to the inhabitants of this country and brought out the produce of the country, principally cotton.

Petitioner alleges that the steamboats "Rosa Bland," the "Blue Wing," the "Friendly," and the "Dortch" and other water craft have been navigating this stream during the last two years and for many years prior thereto, and that said stream has always been a navigable stream; that said steamboats are regular boats, such as usually ply the waters of Red river and other navigable streams of the country.

Plaintiff alleges that it is a violation of the law and the acts of Congress and the Constitution of the United States to impede and destroy navigation and to dam up any navigable stream.

Petitioner alleges that the defendants in the original petition are about to dam up said bayou and navigable stream and destroy the navigation of Bayou Pierre by so doing.

Petitioner alleges that this stream receives its waters from Red river, and that it is made navigable by the flow of water from Red river down its channel, and to stop this flow with a levee or dam will entirely destroy said navigation.

Petitioner alleges that this act is illegal and without authority from the State of Louisiana or any competent authority, and that the State has not the power to confer authority on any person or corporation to build this levee and stop the same, and that the acts of these parties are illegal and without any authority. She further avers that the knowledge of above facts as to the navigabil-

19 ity of said stream was acquired by her since the filing of the original petition herein.

Petitioners specially adôpt and reassert all the allegations and renew the prayers of the original petition. She prays that this amended petition be filed for citation and service according to law and for judgment as prayed for in the original petition.

F. G. THATCHER,
Att'y for Pet'r.

STATE OF LOUISIANA, }
Parish of Caddo. }

Personally came and appeared before me the undersigned authority, Mrs. Lillian W. Egan, to me well known, who, being by me duly sworn, deposes and says that all the facts and allegations of above and foregoing petition are true.

MRS. LILLIAN W. EGAN.

Subscribed and sworn to before me this the 2nd day of November, A. D. 1892.

J. A. THIGPEN,
Notary Public.

(Endorsed:) Filed Nov. 11, '92. F. A. Leonard, clerk.

Judgment on Amended Petition.

District Court, Caddo Parish.

EGAN
vs. } No. 4048.
HART *et als.*

Plaintiff sued out an injunction to arrest the construction of a dam across Bayou Pierre on certain sworn grounds set forth in her petition.

This injunction was subsequently dissolved on bond after due proceedings had.

She now presents an amended petition in which she sets up a new and distinct ground of support of the writ, and asks that the amendment be allowed.

20 Defendants object on two grounds:

1. That amendments to a petition for injunction are not allowable except where it is manifestly for the promotion of justice and under peculiar circumstances; and

2. Because plaintiff has no interest in the issue she proposes to raise by the amended petition.

The general rule in regard to amendments to pleadings is that they should be favored wherever they are conducive to justice and do not alter the substance of the demand or defence.

The amendment in this case does not alter the substance of the demand, which is that the defendants be restrained from constructing certain works for causes mentioned in the petition. The amendment simply sets up an additional cause for maintaining the injunction, but the relief sought in the original petition is not changed, and the allowance of the amendment would not delay the trial of the case.

It would seem, then, that in ordinary cases the general rule mentioned above ought to prevail and the amendment received.

But it is said that amendments to pleadings in injunction suits come under a different rule.

In Calderwood *vs.* Trent, 9 R., 229, it was held that the propriety of allowing any amendment to a petition for injunction in any case is very questionable, and none should be allowed unless it is manifestly for the promotion of justice under peculiar circumstances.

To the same effect is the ruling in Howard *vs.* Simmons, 25 A., 688; Hawley *vs.* Bank, 26 A., 230, and 15 A., 40.

This rule, however, is not without exceptions.

In Hawley *vs.* Bank, 26 A., 230, the court allowed a plaintiff in injunction to amend by pleading prescription of the de-
21 mand enjoined, and the same ruling would apply to all other pleas which the law permits to be made at any stage of the cause.

So in Howard *vs.* Simmons, 25 A., 668, the court, while conceding the general rule to be that petitioners in injunction suits are not allowed to be amended, says that when events have occurred since the institution of the suit which would warrant a new injunction there can be no good reason to refuse them to be stated in a supplemental petition. See I Henn., page 664, II(*a*) No. I.

In the instant case no events are stated in the amended petition as having occurred since the filing of the original petition which would warrant a new injunction. On the contrary, these events occurred long before the filing of the original petition and would have been set up in it but for the sworn averment of the plaintiff that she had no knowledge of their existence until after her suit was begun.

The amendment avers that Bayou Pierre is a navigable stream by nature, and that from time immemorial steamboats and other water crafts have navigated it for the purpose of carrying merchandize to and from the planters living on its bank-.

It further avers, however, that knowledge of its navigability was acquired by her since the filing of her original petition.

Her ignorance of this fact, which must be taken as conceded, ought not to prejudice her rights or place her in a worse position than she would be if the fact of navigability had begun to exist only after the suit had begun.

In either event she could fairly claim the benefit of the ruling in the 26th Annual case, for it is very clear that the allegations of the amended petition would entitle her to a new injunction in the event that the instant one is dissolved.

A judgment upon the issues presented in the original peti-
22 tion would be *res adjudicata* only as to them and would not stop her from suing out another writ on the ground stated in the amendment.

Now, as the law abhors a multiplicity of actions, an injunction will not be dissolved where it appears that the plaintiff would be entitled to a new one.

The allowance of amendments is a matter largely left to the discretion of courts, and when they tend, as in this case, to promote justice, to terminate legal controversies by our decree, and do not

retard the trial of a cause, it must be a very strong case that will justify their rejection.

No answer has, as yet, been filed in this suit. The State is a party thereto by intervention, and has thus the opportunity of protecting its rights should they be assailed in any manner by the allegations of the amended petition.

In view of these considerations I think the amendment ought to be and is allowed.

S. L. TAYLOR,
District Judge.

(Endorsed:) Filed Nov. 11, '92. F. A. Leonard, clerk.

Answer.

In 1st Judicial Dist. Court, Parish of Caddo and State of Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*
No. 4048.

Now comes the defendants in the above-entitled suit and for answer to plaintiff's original and amended petition deny all and singular the allegations contained except such as may be hereinafter specially admitted.

Respondents show that the defendants Henry B. Richardson and F. M. Kerr have no individual interest in the works enjoined by plaintiff, but that their sole connection with the same is and
23 has been in their official capacity as chief engineer and engineers of the State board of engineers and in the discharge of the duties imposed on them as such by the laws of the State of Louisiana.

Respondents further show that the dike or dam complained of is, in fact, a part of the levee system of the State and designed and intended to protect alluvial lands from overflow, and forms a part of a line of levees from the hills on the north bank of Bayou Pierre down Red river.

They further show that said line of levees was located and staked by F. M. Kerr, engineer; was duly recommended for construction; that bids for the same, under the style of "Bayou Pierre to Dixie" levee, were duly advertised for in the official journal of the State by direction of the governor, and that after all due and legal proceedings had the bid of A. Hart, for the price of $4,000.00, was recommended for acceptance and accepted by the governor, and that the said A. Hart thereupon entered into with the State of Louisiana the usual written contract for the construction of said line of levees and gave bond and security in the sum of $4,000.00 for the faithful performance of said contract, which said bond was accepted by the governor; all of which will more fully appear from the advertisements and proposal, report, and recommendation of the board of State engineers, approval thereof by the governor, articles of agree-

ment, and bond and special specifications, copies of which are hereto annexed.

Respondents further show that the said A. Hart, State contractor, was proceeding to construct said levee across said Bayou Pierre, pursuant to plans and specifications furnished thereunder, when respondents were enjoined by plaintiff from prosecuting said public work.

Respondents further show that the said board of engineers was authorized by law to have said outlet closed, and that the
24 contract price is payable out of the Caddo subdistrict fund, over which said board has exclusive control.

Respondents further show that the lands described in plaintiff's petition constitute an island in Red river, and that said plaintiff or her husband, acting for her, has offered to contribute a considerable sum of money for the construction of a dam or levee across "Old river," where it leaves and re-enters Red river; which said construction would have closed Bayou Pierre, which is an ancient outlet of said "Old river" and never has been navigated for commercial purposes at or near the point covered by said State levee. Respondents further show that the bed of said bayou at said point is the property of the adjacent land-owners.

Respondents further show that said injunction was wrongfully and illegally sued out and should be dissolved with damages and costs.

Respondent Hart specially alleges that he has been damaged by said wrongful injunction in the sum of one thousand dollars, special damages as attorney's fees incurred in dissolving the same, and in the further sum of fifteen hundred dollars, damages caused by the interruption and delay of said work by said injunction, including loss of time and expenses incurred pending the same; all of which said damages the said Hart claims in reconvention.

Wherefore respondents pray that plaintiff's suit and demands be rejected with costs; and respondent Hart further prays for judgment against said plaintiff for the full sum of twenty-five hundred dollars' damages, with interest thereon from date of judgment, and for general relief.

LAND & LAND, *Att'ys.*
JOHN R. LAND, *Dist. Att'y.*

(Endorsed:) Filed Nov. 16, '92. F. A. Leonard, clerk.

25 *Motion to Show Cause why Depositions Should Not be Used.*

In District Court, Parish of Caddo, State of Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.* } No. 4048.

Now come defendants in the above-entitled suit and move the court for a rule on plaintiff to show cause before the trial why the

depositions of the witnesses Hoffman, Richardson, and Kerr, taken before A. McGuirk, notary, of the city of New Orleans, should not be used as evidence on account of any informalities in taking the same, and pray for service of said rule and that the same be made absolute.

LAND & LAND, *Att'ys.*
JOHN R. LAND, *Dist. Att'y.*

Service accepted this March 11, '93.

F. G. THATCHER,
Att'y for Pl'ffs.

(Endorsed:) Filed M'ch 11, '93. F. A. Leonard, clerk.

Evidence of Plaintiff.

In the District Court, First Judicial District, Parish of Caddo, State of Louisiana.

Mrs. LILLIAN W. EGAN
vs.
ARCHIE HART *et als.* } No. 4048.

On the trial of the above entitled and numbered cause the following evidence was adduced:

Plaintiff filed in evidence a certified copy of an act of donation from Mrs. M. L. White to Mrs. Lillian W. Egan, the plaintiff in this case, and the same is marked "A."

J. G. McWILLIAMS, witness for the plaintiff, being duly sworn, testified as follows:

Q. You are a resident of the town of Shreveport?
A. Yes, sir.
Q. How long have you been a resident of Shreveport?
26 A. Forty-five years.
Q. Are you acquainted with the plantation of Mrs. Lillian W. Egan—do you know where it is?
A. Yes, sir; but I have not seen the plantation for years.
Q. Did you know it?
A. Yes, sir.
Q. You know something about its probable value?
A. It has always been considered a very fine plantation.
Q. Worth about how much?
A. I declare I can't tell you.
Q. $20,000 or $25,000?
A. What is the number of acres in it?
Q. 800.
A. I should say $20,000 or $25,000, yes, sir.
Q. What effect would it have upon its market value, a place of that size and quality, if it should become more subject to overflow?

Objected to unless it is shown that the witness is an expert. Sustained.

Q. You know something about the effect of overflows, do you, upon the value of plantations?

A. I have my opinion of the effects of overflows—simply my opinion.

Q. What opportunities have you had of knowing the effects of overflows on plantations?

A. I have had a little experience in it.

Q. What experience have you had?

A. I have a place of my own that overflowed.

Q. What effect does it have upon the value of a plantation to become more or less subject to overflows?

A. With me the fact would be that I would not want a place of that sort at all.

Q. If, then, it should be shown that this plantation should
27 become much more subject to overflow by the placing of a dam across Bayou Pierre, would it or not very largely affect the value of the property?

A. With me it would; certainly.

Q. Would it not in the market generally?

A. I should think so.

Q. Do you know anything about the effect it would have as regards the borrowing of money upon it or its sale with those who loan upon or buy such property?

A. Well, in my opinion, I would not loan money upon a place of that sort.

Q. Do you frequently loan money upon places?

A. I do.

Q. In the loaning of money and the examining of places is or not the question of its being subject to overflow one of the elements upon which you make up your judgment as to the amount of money that you loan?

A. With me it is; yes, sir.

Q. And you have loaned money upon Red River places?

A. Yes, sir.

Q. And continue to do so at such times and occasions as you think it is a good investment?

A. Yes, sir; when I have the money to loan.

Q. Now, I will ask you this question: If it should be shown that the closing up of this bayou would make this place subject to a foot more of overflowed water, what effect would it have upon the value of the place and how much do you think it would probably damage it?

A. Well, sir, with me it would damage it very greatly. I would not want it.

Q. Can you give us an estimate; would it damage it more than half its value?

28 A. It would damage it until I wouldn't want the place; with me it would.

Q. Do you think it would destroy half its value, as a matter of opinion?

A. As a matter of opinion I think it would injure it very greatly; as I say, it would injure it so very greatly that I wouldn't have it.

Q. Nearly entirely destroys its value?

A. I wouldn't have it.

Q. This opinion is based upon the theory that this levee would increase the liability to overflow?

A. Yes, sir; increase the amount of water that would overflow on the place.

Q. Mr. McWilliams, you stated, I believe, how many years you had lived here. Do you know anything about where the picnic grounds are near this place?

A. Yes, sir.

Q. Have you ever been to the picnic grounds on a steamboat?

A. Yes, sir.

Q. How did you reach that place on a steamboat from Shreveport?

A. Well, sir, by going down the Bayou Pierre.

Q. Do you know where this levee is located?

A. I don't exactly. I haven't been down that section in a number of years.

Q. Can you tell the name of some of the boats you went to the picnic grounds on?

A. I was never there but once on a boat, and that was years ago, and I don't now recollect the name of the boat.

Q. Did you go on a boat down to the picnic grounds through Bayou Pierre?

A. It was Bayou Pierre, or Old river; it was a part of the
29 Bayou Pierre.

Q. You are not certain whether it was through Bayou Pierre or Old river?

A. It was Old river or a part of Bayou Pierre. I think Bayou Pierre proper breaks out below the old picnic grounds. I don't recollect, though, exactly. I don't know how it is.

Q. Then, in your opinion, an increase of the overflow of the water upon that place a foot or more would almost completely destroy its value?

A. With me, yes; an overflowed place with me is no account.

Cross-examination:

Q. In what year did you first come to Shreveport?

A. 1847.

Q. Was that before or after the Shreve cut-off was made just below Shreveport?

A. My impression is that it was just after, but I do not now recollect.

Q. The navigable channel of Red river as used by steamboats and followed by them ever since you have been in this country to

the east of this Grigsby's island has always been known as Shreve's cut-off?

A. Yes, sir.

Q. Then it follows that before this cut-off was made that Red river flowed down to the right of Grigsby's island by the picnic grounds?

A. Yes, sir; I presume it did.

Redirect examination:

Q. You say you don't — whether you came here before or after the cut-off was made?

A. I don't recollect when it was made.

Q. Then, of your own knowledge, you don't know anything about the matter?

30 A. No, sir.

J. BOISSEAU, witness for the plaintiff, being duly sworn, testified as follows:

Q. Do you know the plantation of Mrs. Lillian W. Egan, about which we were enquiring?

A. Yes, sir.

Q. What did you regard its value prior to the time that this levee was thrown across Bayou Pierre?

A. Well, it was a very valuable place; I suppose worth about $25,000 or $30,000; maybe more.

Q. Do you know where Bayou Pierre is that passes by and carries off the water from her place?

A. Yes, sir.

Q. What use is that as a drainage to her place?

A. Well, it is very essential to her place as a drainage. It is very essential in high-water times as a drainage to her place.

Q. Does it not carry off a very large quantity of water during high water?

A. I think Bayou Pierre carries off more water than Red river in high water; not at that place particularly, but taking Bayou Pierre as a whole. Taking Tone's bayou, Sand beach, and Bayou Pierre proper, they carry off more water than Red river at high-water times.

Q. The amount of water carried off at this point by these different inlets that come in there and form Bayou Pierre is more than carried off by Red river?

A. There are three streams there which form Bayou Pierre. I think that Bayou Pierre, with the different prongs of it below, would carry off at least a third as much water as Red river at that particular point.

31 Q. Would that make a big difference in the overflow upon her place?

A. Yes, sir.

Q. Have you any idea about what amount it would effect her

place by the placing of that water up—as to the height it would place the water upon her plantation?

A. If those levees did not break I think that the estimate could not be less than four or five feet on that particular place.

Q. It would be damming up all the outlets on both sides and confine the whole river into a much narrower space, and it is bound to increase the height considerably?

A. Yes, sir.

Q. And necessarily increase the height of water on her place?

A. Yes, sir; and it would, besides that, make a kind of cup of her place. Her place lies between Shreve's cut-off and Scrogin island. It would take an immense levee, if she could protect it at all. There would have to be a levee all around her place, making it a kind of cup, with seep and rain water in it.

Q. Would not that ruin the value of the place?

A. Yes, sir.

Q. To what extent of value would it ruin it?

A. Almost entirely destroy it, in my opinion.

Q. Would it injure it as much as $20,000 or $25,000?

A. I would not consider the place worth anything for a man to risk money on making a crop. He might have low water one year and do fine and the next year have high water and be washed away.

Q. As a farm you would consider its value entirely destroyed?

A. Yes, sir.

Q. How long have you been living here?

A. I have been in Shreveport since the winter of 1848.

Q. Have you ever been to the picnic grounds down there on a steamboat?

32 A. Never on a steamboat. I have been there frequently, but on other boats.

Q. Have you ever seen any steamboats go to the picnic grounds?

A. Yes, sir; numbers of them.

Q. Do you know how they went?

A. They would come down Old river in low water. In high water they would go just around the hills to what they used to call the head of Bayou Pierre.

Q. Don't this Old river run into Bayou Pierre? This dam is across Bayou Pierre proper down below Old river?

A. Yes, sir.

Q. Old river, then, does run into Bayou Pierre?

A. Yes, sir; Bayou Pierre proper goes out of Red river right at the ferry where Mr. Smith lives—right besides the Hart residence.

Q. Do you know about the navigability of Bayou Pierre, generally?

A. Well, sir, Bayou Pierre has been navigable ever since the '50s, to my knowledge, through Bayou Wincey into Bayou Pierre and out of Tone's bayou into Red river. I never knew of Bayou Pierre being navigated up to the Hart place, but it was a navigable stream. I have made several trips in Bayou Pierre myself while I was

steamboating. I came through Bayou Wincey and through Tone's Bayou into Red river, down in the Scopini cut-off.

Q. What is the distance from where you come into it?

A. I suppose the distance from Bayou Wincey to Tone's bayou would be about—I have never been there myself, but I think it would be about sixty or eighty miles.

Q. The channel of Bayou Pierre is a straight channel?

A. It is straight, but not so long as Red river. I think it would cover 150 miles of river. I have been from Tone's bayou down to Red Bluffs. I know of a steamboat that made regular trips
33 through Bayou Wincey. I think there were two of them, the Telegram and the Sunbeam, I think. Their regular trips were through Bayou Wincey.

Q. Do you know what is the trouble in coming up from Red Bluffs the other way?

A. It is filled up with logs since the opening of the raft above Shreveport; up to that time Tone's bayou was open, and in fact the upper portion of the water of Red river ran down Bayou Pierre, and at one time they thought that the navigation of Red river was going to be destroyed entirely and the Government stopped up Tone's bayou and it raised the water so that the dam was cut; then the water continued flowing through Tone's bayou and it was made considerably higher, carried off more water than Red river, and after the raft was opened it flowed down Red river and was sucked into Tone's bayou and down Bayou Pierre, just below Red Bluff, and caused a jam up to the height of Tone's bayou, and since that time we have had our best overflows.

Q. You say that the United States Government stopped up Tone's bayou?

A. Yes, sir.

Q. What year did it stop it up?

A. I don't remember; I suppose ten or fifteen years ago.

Q. It was done by the United States authority?

A. I think so. I can tell you something about it. The night it was cut there was a fall, some say, of seven or eight feet at Shreveport, in one night, of Red river.

Q. Then Tone's bayou was stopped up by United States authority?

A. Yes, sir; it was leveed with a levee.

Q. A dirt levee like this one down here?

A. Yes, sir.

34 Q. You don't know whether that was done by authority of an act of Congress, do you?

A. I don't know anything about it; I know it was leveed.

Q. Do you know anything about the depth of water from Red Bluffs up to where this dam is here?

A. No, sir; I never was through Bayou Pierre from Hart's island down to Red Bluffs, only through Tone's bayou.

Q. Do you know the distance from Red Bluffs up to where this dam is on Bayou Pierre?

A. I don't know exactly; but you can arrive at it this way: It

used to be called about thirty miles from Shreveport by river to Tone's bayou, and I suppose it would be about fifteen miles by going straight by the side of the hills; I don't know the exact distance.

Q. I believe I understand you to say that Tone's bayou is largely stopped up with a raft now?

A. I haven't seen Tone's bayou since it was stopped up, but I have heard and I know it is stopped up; I know it is stopped up, and, I understand, trees growing in it.

Q. How is the navigation of Bayou Pierre; at what seasons of the year is it generally navigable?

A. At a medium stage of water in Red river Bayou Pierre was navigable from Bayou Wincey up to the mouth of Tone's bayou—that is, at a medium stage of water.

Q. It depends upon the stage of water in Red river?

A. Yes, sir.

Q. When it was in that condition, a medium stage of water, there was no levee across any of the inlets, was there?

A. No, sir.

Q. Do you know anything about Old river down there, out of which Tone's bayou now receives its waters?

35 A. Do you mean down at the Hart's island?

Q. No, sir; I mean down at Tone's bayou.

A. Well, it will not receive any water at all only that that runs through Tone's bayou and that that overflows its natural banks.

Q. Do you know anything about Old river, which is formed down by the Scopini cut-off?

A. No, sir; I have not been down there for a number of years.

Q. I will ask you this question. You have been a steamboatman and know about the effect of cut-offs and about the effect of the river ceasing to be a navigable stream. State whether or not they do not continue to fill up and get higher and higher and sand bars form.

A. All cut-offs, I know, fill up with sand; they generally commence filling up at the lower end first, of the cut-off.

Q. Do you mean by that the Old river that is leveed?

A. Yes, sir; the Old river fills up at the cut-off. Now, if there is a stream like Bayou Pierre that is taking off the water, then it would not fill up, for the reason that it has an outlet to the cut-off. I have a plantation in Arkansas that has a levee right across the cut-off, and the Old river is filled up entirely; but if there is a stream like Bayou Pierre at the lower end of it, one end remains open, because that is a natural channel.

Q. Have you any idea of the proportion of water that passes through Bayou Pierre up here where the dam is, the upper portion that makes Bayou Pierre navigable, before this dam was put up—about what proportion of this water?

A. I suppose that half as much of the water would go out of the head of Bayou Pierre as went out of Tone's bayou.

Cross-examination:

Q. If I understand you, it is your opinion that if the outlets of Red river are closed up by dams or dykes and the banks of the river leveed that there will be continuous overflows every year?

36

A. Well, it is my opinion that if the levees are continuous levees that the levees are bound to break, and if they don't break it is bound to overflow. I don't think the Red river can possibly carry off the water that comes down the valley between any levees; that is my idea.

Q. That is the reason why that you think this place will be damaged?

A. Yes, sir; it is because those levees are put up on both sides, and besides that the outlets are closed. I believe that if the outlets are all left open that those levees would all stand, and even smaller levees would keep the places from being overflowed.

Q. Your opinion is that if the outlets were closed the cultivated lands along Red river would all be damaged?

A. No, sir; I don't say that. I say that the cultivated lands that are left between those banks of the river in front of those levees they will be bound to be overflowed, because the water will rise much higher on them than if the levees had not been put there, because the surplus water could not escape.

Q. You have testified that this embankment has damaged this particular piece of land. Why is it damaged?

A. I think it is damaged, this particular land, because the levee is back of this land.

Q. Then this levee is right across Bayou Pierre?

A. Yes, sir; it leaves this place partly in the bed of the river.

Q. Then, if I understand you, if this embankment were simply across Bayou Pierre, where it is near the old bridge, and were not extended any farther, that it would not damage this place?

A. It would be a damage to her because it would carry a large lot of water that Red river would be relieved of, consequently it would rise on the Red River lands that much higher.

37

Q. I understand, then, that you- opinion is that to close the outlets will have the effect of damaging all front Red River lands?

A. Yes, sir; all of them, but more particularly lands that are not leveed. The State is leveeing Red River lands and some of the Red River lands they are not leveeing—that is, land that is lying out between those embankments, they will be submerged deeper.

Q. The closing of the outlets will raise the flood level of the river; that is what you mean?

A. Yes, sir.

Q. Now, have you any knowledge of the levels of the river from Shreveport to Tone's bayou?

A. No, sir; I have not.

Q. You don't know the comparative heights at particular places?

A. No, sir. I know that Red river has very little fall.

Q. Do you know the comparative heights at particular places?

A. No, sir. I have never had occasion to find out.

Q. On what does the carrying capacity of the stream depend?

A. I suppose the breadth and depth of its channel; and I will tell you something else: Bayou Pierre is much lower than Red river. There is a considerable fall from Red river into Bayou Pierre, and during high water the water falls out of Red river down through Bayou Pierre into those swamps, and, in fact, whenever it overflows it falls into those big swamps here, and if you stop up those outlets the river overflows; it hasn't got the room to relieve itself.

Q. Do you remember when Tone's bayou was a very insignificant stream; merely a little ravine?

38 A. Yes, sir.

Q. It carried off nothing then?

A. Yes; it always did; but I remember the time when Mr. Gilmer cut it out; he cut it out deeper.

Q. It was very small then?

A. Yes, sir.

Q. Do you know anything of it before then?

A. I don't remember anything further only from my steamboating knowledge, which commenced in 1853.

Q. There is a time in your recollection when Tone's bayou carried off an insignificant amount of water?

A. Yes, sir; there was a time.

Q. Is there a time in your recollection when there was no Sand Beach bayou?

A. It has been a big bayou ever since I have known it.

Q. Don't you remember that Sand Beach shortly before the war carried off much more water than it had formerly done?

A. I don't know.

Q. Isn't it a fact that Sand Beach carried off very little water?

A. In high water it carried off a great deal, but when the river was at a medium stage Sand Beach amounted to nothing. I have seen it almost dry, but at a high stage of water it carries off an immense amount of water.

Q. Tone's bayou developed and increased until it carried off an immense amount of water?

A. It developed and increased until it nearly carried the whole of the water of Red river. It dried up Red river nearly from Tone's bayou down to Bayou Wincey.

Q. Isn't it a fact that as Tone's bayou increased in capacity that there was less water went down Bayou Pierre?

A. No, sir. I have frequently during low water been able

39 to ride across Bayou Pierre, but I have never seen the time when it was not running briskly. Right there at the Hart place it would be very low water sometimes.

Q. You don't know that to be a fact, that less and less water went down Bayou Pierre every year as Tone's bayou increased?

A. I don't know that. I think it very probable that such was the case, for the reason that if Tone's bayou was taking the water

out of Red river below it would lessen it above, and, as a matter of fact, that would lessen the water that went down Bayou Pierre.

Q. Is it not a fact that Bayou Pierre just below Shreveport carries off very little water, only at periods of high water?

A. I don't know about that. I know that Bayou Pierre is a constantly running stream; it was up the time that I last knew about it. I haven't been there for seven or eight years.

Q. How do you get at a comparative estimate of the flow of Red river proper or the carrying capacity of it and Bayou Pierre?

A. Well, I do it this way: for the reason that Bayou Pierre, as I said before, next to the hills, from there to where Tone's bayou runs into it, is much lower than Red river.

Q. I thought you said you didn't know anything about the level of Red river?

A. I know from my eyesight, from running up and down the bayou.

Q. You are talking about Tone's bayou?

A. Yes, sir.

Q. I am trying to get you to Bayou Pierre.

A. I told you that I never navigated Bayou Pierre above there, and I know nothing further about it.

Q. How do you get at your estimate of the comparative carrying capacity of Bayou Pierre and Red river?

A. I get at my estimate by the lowest level of Bayou Pierre being lower than the lowest level of Red river.

Q. And by the amount of water going down Tone's bayou?

A. No, sir.

Q. What is the length of Tone's bayou before it strikes Bayou Pierre?

A. About a mile.

Q. How far is that below Shreveport?

A. About thirty miles by the river. I think they call it fifteen miles from here to Tone's bayou by land.

Q. If I understand your testimony, you said that before this work was put up that this plantation was worth about $20,000 or $30,000.

A. Yes, sir; I think so.

Q. And I understood you to say that this work in Bayou Pierre has made that plantation valueless.

A. Yes, sir; that is what I mean—that is, in my estimation.

Q. Was that plantation overflowed in 1892?

A. I think it was.

Q. Do you know what depth of water was over it?

A. No, sir.

Q. Was it overflowed in 1891?

A. I don't think it was.

Q. Was it overflowed in 1890?

A. I think it was.

Q. Well, when was the high water before that—in 1884?

A. I don't remember whether it was overflowed then or not.

Q. We had very high water in 1866 or 1867, which was it?

A. It was 1866 and 1867.

Q. Was this plantation overflowed in 1866 and 1867?
A. Partially, I think.
Q. It was only partially overflowed in the overflows of 1866
41 and 1867?
A. Yes, sir.
Q. You don't know whether or not it was overflowed in 1884?
A. No, sir.
Q. But you know it was overflowed in 1890 and 1892?
A. Yes, sir.
Q. What was the danger line in 1866 and 1867?
A. I don't know, sir. I don't think we had the *gua*ges up at that time.
Q. Which was the highest water that ever came down here, to your knowledge?
A. It was in 1890 and 1892.
Q. Wasn't 1849 the highest we ever had?
A. I don't remember about 1849. I was too little to remember.
Q. How was it in 1866?
A. The water lacked several feet of being as high as it was in 1892. 1892 is the highest water we have known since 1849.
Q. This plantation was overflowed in 1892?
A. Yes, sir.
Q. You don't know to what depth?
A. No, sir.
Q. In 1890 it was overflowed?
A. Yes, sir.
Q. But you don't know to what depth?
A. No, sir.
Q. And you don't know whether it was overflowed in 1884?
A. I don't know.
Q. Do you know the difference between the floods of 1884 and 1892?
A. I don't know the exact height the water attained in 1884.
Q. This dam wasn't there in 1892, was it?
A. No, sir.
42 Q. And the place overflowed all the same?
A. Yes, sir; and I think every place on Red river overflowed in 1892.
Q. And this dam wasn't there in 1890?
A. No, sir.
Q. And the place overflowed just the same?
A. Yes, sir; and almost every place overflowed then on Red river.
Q. From 1850 to 1890 that plantation was not overflowed?
A. Not that I remember; only partially. It was overflowed a little bit in 1867.
Q. In 1890 and 1892 it was overflowed?
A. Yes, sir; a general overflow on Red river.
Q. Don't the fact that that plantation, which had been for years free from overflow and not subject to overflow—isn't it a fact that

the fact of its being overflowed in 1890 and 1892 greatly depreciated the value of its land?

A. These overflows have depreciated the value of all lands on Red river.

Q. The overflows of 1890 and 1892 have depreciated the value of all the lands on Red river?

A. Yes, sir.

Q. And this tract among others?

A. Yes, sir.

Q. What was it worth before it was overflowed in 1890?

A. I said it was worth about $25,000 or $30,000.

Q. That was before this dam was put up?

A. Yes, sir.

Q. And all Red River lands have been depreciated in value by these overflows?

A. Yes, sir.

Q. Your idea, then, is that before the overflow of 1890 this particular plantation was worth much more than after that over-

43 flow?

A. Yes, sir.

Q. What was it worth before 1890?

A. I would say it was worth $25,000 or $30,000.

Q. After the overflow of 1890 what would it be worth?

A. I don't know what effect it would have on it.

Q. It had a very injurious effect upon those lands?

A. Yes, sir.

Q. As I understand you now, the effect of this dam does not destroy the value of this plantation entirely?

A. Yes, sir; the effect of the dam much more destroys it—makes it worthless in my opinion.

Q. You say it was worth $25,000 or $30,000 before this overflow and you say it was depreciated in value by the overflow. If it was depreciated by this overflow it could not be depreciated by this dam. Isn't that true?

A. I say that all Red River lands by these overflows have been very much depreciated; but I say that this particular place, by the stopping up of that bayou and the levee system, has been much more depreciated than any other land; there is no salvation for it.

Q. Why?

A. I don't know; I can't see why there is any.

Q. You just know that it is a fact?

A. That is my idea of it, to the best of my knowledge.

Q. You say that this dam has ruined the place?

A. Yes, sir; in my estimation.

Q. How? There has been no water on the place since the dam was put there?

A. I am just giving you my opinion.

Q. You think the dam will do that?

44 A. I think so.

Q. Have you had any experience or have you any way by

which you can determine how the flood level will be raised by that dam?

A. Only this, that I don't think you can put a barrel measure in a quart cup. I don't think you can put Red river, when it is twenty miles wide, in a little quarter of a mile pass without raising the flood level.

Q. Then, in other words, you think that dams and levees will raise the flood level?

A. I do.

Q. You base that opinion on some reason. Why do you think so?

A. Because the narrower you make the channel the higher the flood level has got to be.

Q. Do you think that is a proposition in hydrostatics?

A. That is the way that I figure it out.

Q. You think, then, that the carrying capacity of the river is in proportion to its width?

A. I think that when an overflow comes like that of 1890 and 1892 it has got to have a place to go. It can't possibly run between those narrow banks.

Q. Your opinion is, then, that they are all injurious?

A. There is no use in giving my opinion on that.

Q. You have no means by which you can accurately determine the carrying capacity of either Red river or Bayou Pierre?

A. Yes, sir; I have a plantation on Red river, and I have been watching Red river all my life, and my means are natural experience and observation.

Q. Have you any means by which you can determine it to your own satisfaction?

A. Yes; when I hear that water is coming down from up above I can pretty nearly tell a man how high it will be here at
45 Shreveport. You can't expect to out Red river, when it is fifteen to twenty miles broad, in a narrow pass between two levees.

Q. I was trying to find out by what means you arrive at a conclusion as to the carrying capacity of Red river and Bayou Pierre.

A. The thing is that Bayou Pierre is lower than Red river proper.

Q. That is, you mean at Tone's bayou, below this dam?

A. I think the whole of it is; when the water gets a certain height more water runs down Bayou Pierre than down Red river.

Q. How do you know that Bayou Pierre is lower than Red river?

A. I know that Bayou Pierre is lower than Red river for the reason that I can tell when I am walking uphill.

Q. That is right opposite Tone's bayou?

A. Yes, sir.

Q. Now, then, you can't estimate the comparative capacity of Bayou Pierre below Shreveport?

A. Yes; I can. I once rented the Hart place and I saw the water coming through there and I don't think any man that was down

there but would think there was a world of water going down that way.

Q. This dam certainly cannot effect any navigation down as far as the dam itself?

A. The water will run until it gets to the dam, but it will be dead water in there until it fills up with sand.

Q. Until it does fill up with sand the navigation will not be interfered with?

A. Yes, sir; until it fills up with sand.

Q. At what point did Bayou Pierre relieve Red river?

A. I think that Bayou Pierre went out where they closed it up.

Q. Isn't that right at the hills?

A. Yes, sir; right at the hills; it leaves the river down at Mr. Smith's house—that is, Old river.

46 Q. From the mouth how far is it around to Tone's bayou?

A. I think it would be about fifteen or sixteen miles; it is a little further than a straight road, but a much shorter distance than the river proper to where it joins Tone's bayou.

Q. How far is it from where Bayou Pierre leaves the river to Tone's bayou?

A. I said from the head of Bayou Pierre to Tone's bayou would be about fifteen or sixteen miles by water, nearly the same as it would be by land; by river it was called thirty miles.

Q. In speaking of the navigation of Bayou Pierre, I want you to explain this: As I have understood you, Bayou Pierre above Tone's bayou to the point where it leaves the river is not navigable?

A. I have never known a boat to run up that part of the bayou.

Q. That is, the stream which they are closing is not navigable?

A. That part of Bayou Pierre, I don't think, has ever been navigable.

Q. The navigation of Bayou Pierre is through Tone's bayou?

A. Yes, sir.

Q. By closing Bayou Pierre where it leaves Old river don't you increase the water in Tone's bayou and improve navigation below?

A. I don't know about that. If this bayou is closed and Tone's bayou is not closed I think there will be much more water go down Tone's bayou.

Q. Isn't the navigation of Tone's bayou below Bayou Pierre improved?

A. I don't know; if you raise the water level in Red river higher more water will run out of Tone's bayou, but in low water I don't know that it would make any difference.

Q. It is that part of Bayou Pierre which is not navigable that they are closing?

A. That is what I have said.

47 Q. When you speak of Bayou Pierre as being a navigable stream you mean that part of Bayou Pierre below Tone's bayou?

A. I said that I had never navigated Bayou Pierre only through Tone's bayou. I have never known Bayou Pierre navigated above Tone's bayou.

Redirect examination:

Q. They asked you something about Mr. Gilmore's opening Tone's bayou; there was no bayou at Tone's bayou until he cut it out?

A. There was a small bayou there and he opened it.

Q. What was it until he opened it?

A. It was just a small slough; the water ran out of it very rapidly.

Q. Was there any water running out of it except at high water?

A. Very little, but he deepened it so that the water run out at low water.

Q. Then Tone's bayou was not naturally navigable; it was a small stream?

A. Yes, sir; never navigable until after Gilmore opened it.

Q. What did he do to it?

A. He dug it out, and then the water washed it out.

Q. He made the opening in it?

A. Yes, sir.

Q. Do you know anything about Bayou Pierre up here; it was not made by artificial means, was it?

A. No, sir.

Q. So Tone's bayou was made by artificial means and Bayou Pierre was a natural outlet?

A. Yes, sir.

Q. You don't know anything, then, about whether there was water enough above Red Bluff to be navigated?

A. No, sir; I don't know.

Q. You don't know anything about the depth of water or
48 whether its failure to be navigated is owing to sand bars or logs and trees?

A. I don't know anything about it.

Q. But you do know that Tone's bayou was dug out there and made what it is by Mr. Gilmore, and then washed out by the water?

A. Yes, sir.

Q. I will ask you, then, if two streams running into Bayou Pierre would not give more water to it than one stream would, even though it increased the height of water in the river below.

A. As a matter of course, two streams would give more water.

C. H. ARDIS, witness for the plaintiff, being duly sworn, testified as follows:

Q. You are a resident of the city of Shreveport?

A. Yes, sir.

Q. How long have you resided here?

A. Twenty years.

Q. What is your occupation?

A. Merchant.

Q. Wholesale grocer?

A. Yes, sir.

Q. Do you know the plaintiff in this suit, Mrs. Lillian W. Egan?
A. Yes, sir.
Q. Do you know her place, Grigsby's Island?
A. Yes, sir; partially.
Q. What, in your opinion, was the value of that place a year ago or before the building of this dam in Bayou Pierre?
A. Over a year before the overflow of 1892 I thought it was worth $25,000 to $35,000.
Q. How has its value been affected by the building of this dam across Bayou Pierre?
A. Well, it has been considerably injured, I think.
49 Q. About how much?
A. I don't know that there is any demand for it, but I don't think it is worth over half as much as it was before.
Q. Do you think this depreciation in value was caused by the building of this dam across Bayou Pierre?
A. I think so, to a great extent.
Q. In about what proportion?
A. From this fact: I have had occasion to try to rent that place this winter, and the building of the dam seemed to have been a great prejudice on the part of the people who wanted to rent, and they objected to it—that the dam was there—and they felt like the first high water that came the whole place would go under.
Q. Then it has seriously impaired its rental value and the selling value of the place?
A. Yes, sir; that is according to my way of judging.
Q. Have you visited this place?
A. No, sir; not recently.
Q. How do you know the fact?
A. Only from the hearsay of those who are occupying it and those who have been there.

R. T. TERRELL, witness for the plaintiff, being duly sworn, testified as follows:

Q. Do you know the plantation of Mrs. Lillian W. Egan?
A. Yes, sir.
Q. What was about the value of that place prior to the building of this dam across Bayou Pierre?
A. I think it was worth $20,000 or $25,000.
Q. What damage do you consider the placing of that dam across there will have upon the value of that place?
A. I think that it is hard to estimate.
50 Q. Would it damage it half?
A. No, sir; hardly that much.
Q. About how much? Something like half?
A. I think it will knock at least one-third of the value off—that is, it would in my estimation, if it was my place.
Q. Are you living on that place now?
A. Yes, sir; I am renting.

Q. Did the placing of that dam have any effect on the price of the lease that you were willing to pay?

A. Yes, sir; I gave the place back and would not rent it on that account, and then afterwards I rented it because I had to; I couldn't get any other place.

Q. If you could have gotten any other place you would not have taken it?

A. Yes, sir.

Q. And the reason of it was on account of this dam?

A. Yes, sir; because I thought it would be overflowed.

Q. To keep it from overflowing it will require much more extensive levee around the place, will it not?

A. Yes, sir.

Q. About how much more?

A. Just according to how much it will cause the water to rise in the river. It is owing to just what difference it will make in the river.

Q. You have seen the water pass down Bayou Pierre, have you not?

A. Yes, sir.

Q. About what proportion passes down there as compared with the river?

A. I think it is owing to the stage of the water.

Q. What is it when the water passes the danger line?

A. I don't know; about one-sixth of the water, if that much.

51 Q. It carries a very large proportion of the water?

A. Yes, sir; at high water it carries a good deal of water.

Q. Have you any doubt about the fact that the stopping that up will make the water rise higher than if it was not there?

A. Yes, sir; I am satisfied that it would raise the water to a certain extent. It is bound to raise it some, but I don't know how much. That is the reason I gave up the place.

Q. Were you there last year along about Christmas?

A. Yes, sir.

Q. Was there considerable water in the river then?

A. Yes, sir.

Q. This levee was then across there, wasn't it?

A. Yes, sir.

Q. Do you know anything about what effect it had in making the water rise higher at that stage of the water than it did previously?

A. No, sir; I don't know.

Q. Are you giving as much rent now as you did previous to the building of this dam across Bayou Pierre?

A. No, sir.

Q. How much less?

A. I think about $900 less. I think I paid last year $3,000, and about $2,100 for this year; but, then, there is a little land left out that did not overflow, and I think I paid a little extra for that.

Q. Do you know anything about the Bayou Pierre being navigated down to the bridge?

A. Yes, sir; I have seen steamboats come around there.
Q. They could have gone on if the bridge had not been there?
A. Yes, sir; they could have gone to the dam and gone further, I suppose, if the bridge had not been there.

52 Q. Do you know anything about parties furnishing a portion of the money to build this levee across Bayou Pierre?

A. Yes, sir; I think there was a part of it made up by private subscription.
Q. How much of it?
A. I think there was $3,500 or $4,000.
Q. Do you know how much Mr. Hart gave?
A. No, sir; I think it was $1,500; I heard it was that; I never saw the list.
Q. Did you hear any of these parties say so?
A. Yes, sir; I heard them talking about it; I think I heard Mr. Hart say, and I think he said $1,500, and I heard Mrs. Robards say to give $1,000, I know.
Q. How much did Mr. Colquitt give, do you know?
A. I think $500.
Q. Do you know what Mr. E. M. Smith gave?
A. No, sir; I don't remember.
Q. Or Mr. Slattery?
A. No, sir; I don't remember.
Q. A. H. Leonard?
A. No, sir; I don't know what he gave.
Q. N. C. Blanchard?
A. No, sir; Mr. Van Hoose signed for Mrs. Robards is the reason that I know that. I have heard the matter discussed time and again, but I don't know the amounts.

Cross-examination:

Q. This Grigsby's island is in Bossier parish, isn't it?
A. Not if I understand it; I think it is in Caddo.
Q. How is this island bounded?
A. I don't think it was ever considered in Bossier.
Q. How is it bounded all around?

53 A. I think it is bounded on the north side by Wright island, from Lamorie's bridge up to Wright island by Old river, Red river on the east of it, and Old river and Shreve's island on the other side.

Q. You mean that Wright island and Shreve's island are opposite to it?
A. Yes, sir.
Q. What water bounds it? It is an island, isn't it?
A. Yes, sir.
Q. Well, what water bounds it?
A. Bayou Pierre and Old river on two sides of it and Red river on the other.
Q. Isn't there a levee all around this place; this Grigsby's Island place?

A. Yes, sir; all with the exception of about three-quarters of a mile; from the old quarter down to Bayou Pierre there is no levee on the front; it has never overflowed.

Q. The rest of the place is leveed except a very high bank there which has never overflowed?

A. Yes, sir; from the Old River front down.

Q. Was that a private levee around that place?

A. Yes, sir; all private levee.

Q. Mr. Terrell, you say that this dam built across Bayou Pierre is bound to raise the water on Grigsby's island?

A. Yes, sir; I think it would do it; I am satisfied it would do it.

Q. Why?

A. Because it will throw more water into the river.

Q. Why?

A. Because every outlet that you close throws more water into the river.

Q. Why?

A. It throws more water into the channel.

54 Q. How do you know it?

A. Common sense teaches it.

Q. Suppose the danger line at Grigsby's island is about twenty-nine feet; suppose the water does not get up there to twenty-seven feet; do you suppose there is going to be any damage resulting there?

A. I suppose not.

Q. Will this dam hurt Grigsby's island, then?

A. I don't think it will.

Q. Suppose it gets up to twenty-eight feet, will it hurt Grigsby's island then?

A. I don't know what the danger line is.

Q. This water won't affect Grigsby's island at all if the water is carried off instead of going over Grigsby's island?

A. No, sir.

Q. Then it won't be hurt, will it?

A. No, sir; that is owing to the water.

Q. There can no water go over Grigsby's island in consequence of this dam, except that it comes down Red river, can it?

A. No, sir.

Q. Now, then, suppose that Red river carries off all the water that comes down it so that the flood line does not reach twenty-nine feet, there will be no damage to Grigsby's island from this dam?

A. It will make a difference in the river, but it won't overflow it.

Q. Will it be higher if the river carries off the water?

A. I don't know.

Q. Don't that depend upon the carrying capacity of the river?

A. The river hasn't got any more carrying capacity now than it had then.

Q. How do you know?

55 A. Because it has not been widened any.

Q. Your idea, then, of the carrying capacity of a stream is its width?

A. Yes, sir.

Redirect examination:

Q. You say this island is leveed all about three-quarters of a mile?

A. I think it is about that.

Q. The present levees have served to protect this place from overflow, except in exceedingly high stages of water, in the past?

A. Yes, sir.

Q. Will the building of this dam render necessary the increase of the present levees in height and the building of a new levee for that unleveed portion?

A. I estimate it they will have to raise it in proportion to what the water would rise in that bayou. It would cost them just that much more expense.

Q. Then Bayou Pierre, before the building of this dam, has carried off a large volume of water at time of high water, hasn't it?

A. Yes, sir.

Q. How much will they have to raise these levees then?

A. I think they would now have to build about three feet, and if the river raises any more they would have to add that much on.

Q. If there be any?

A. Yes, sir; if there was none he would have to build no more than he would otherwise.

Q. Hasn't Bayou Pierre, until this dam was built, carried off a very large quantity of water whenever the water was high in Red river?

A. Yes, sir.

Q. A large portion of the water coming down Red river comes that way?

56 A. Yes, sir.

Q. Do you know why the place overflowed last year?

A. Because we had too much water, I guess.

A. C. HEPBURN, witness for the plaintiff, being duly sworn, testified as follows:

Q. What is your occupation?

A. Civil engineer.

Q. Have you made a survey and map of these bayous?

A. Yes, sir; I have made a map of the location of the islands, levees, bayous, rivers, etc.

Q. Will you examine this and verify it to be a true and accurate map made from actual measurements?

A. Yes, sir.

Q. That map was made from actual measurements and surveys?

A. Yes, sir.

Q. These levees, etc., are made by actual survey?

A. Yes, sir.

Plaintiff filed in evidence the map in question, and the same is marked "B."

Q. Will you state whereabouts on this map Bayou Pierre makes out of Red river?

A. I know nothing of the names of the streams except what I have seen on the original surveys. The stream is designated as Old Bayou Pierre on the original surveys. It is so designated on every map I have seen.

Q. State where Bayou Pierre makes out.

A. The water comes down through all those inlets and outlets in Bayou Pierre at certain stages of the water.

Q. Do you know anything about the depth of water in Bayou Pierre?

A. Yes, sir; 150 yards above the bridge I could not find
57 bottom with a 12-foot rod.

Q. What date was that?

A. That was March 13th.

Q. What was the height of water here at Shreveport?

A. There was about fifteen feet of water on the *guage* here at Shreveport.

Q. Do you know anything about what the depth of water is where it goes out of Red river?

A. Yes, sir; there is over 12 feet of water there.

Q. Do you know anything about the width of this inlet here, marked point "A" on the map?

A. Yes, sir; it is 180 feet.

Q. At the present stage of water?

A. Yes, sir.

Q. In a high stage of water how deep would that be?

A. That would — over thirty-two feet deep.

Q. It would be something over thirty feet?

A. Yes, sir; it would be over thirty feet.

Q. And 180 feet wide?

A. Yes, sir.

Q. Now, what is the distance from this inlet, marked "A," to the bridge down Bayou Pierre?

A. Not quite a mile and a half.

Q. And how far is the dam below the bridge?

A. About one hundred yards.

Q. How far is the distance from the lowest portion of Mrs. Egan's place to the dam?

A. Not over 150 yards.

Q. What is about the width of the stream where the dam is?

A. They have excavated so much there it would be hard to say what it would be. They have changed the contour of the
58 cross-section of the stream. The stream is somewhat larger above the bridge than it is at that point.

Q. What is about the width of it? At the present stage of water, 15 feet of water on the *guage*?

A. 130 or 140 feet wide.

Q. Do you know anything about the depth of the water down there at the present time?

A. No, sir; they have filled it in and I didn't take soundings.

Q. What will be the effect of this levee across Bayou Pierre as to increasing the quantity of water on this plantation?

A. It will raise the flood level for the time being. I don't know what it will eventually result in.

Q. What, in your opinion, would the height of the levee around that place have to be increased to meet this extra raising of the level of the water?

A. The difference between the elevation of the two levees above the flood level and the Grigsby Island levee at that point was above the high water of 1892.

Q. What will be the additional height they will have to build the levee?

A. If you get as high as the State levee it would take three and three-tenths feet.

Q. That is the levee that has just been built there by Hart?

A. Yes, sir.

Q. What would be the cost of building up that levee?

A. I had heretofore staked out most of the levees that had been built on the place, and I had not at that time run around the portion that was not leveed, giving that distance. That distance, I find, is less than what was given me.

Q. What is the distance left unleveed?

A. It is practically a mile. I make an approximate of
59 about 40,771 cubic yards would require to put the place on the same basis as the State levee.

Q. What would that cost?

A. I don't know.

Q. At the usual rate of levee-work what would it cost?

A. I expect you could get it done for fifteen cents per cubic yard.

Q. The building of this levee across Bayou Pierre, what will it necessitate, in your opinion, in regard to levees?

A. It will necessitate higher levees.

Q. How much?

A. I could not pretend to say how much; this side would require three feet more.

Q. How much of it would there be, all around?

A. It would have to be all around, as it is an island; it would be within the two levees of the Bossier and Caddo side; it would be all around.

Q. How would that leave the place as to drainage?

A. It would leave it in bad shape; it would have no natural drainage when the water got above the surface level.

Q. It would leave it in the shape of a basin or cup?

A. Yes, sir.

Q. Do you know Mack's bayou?

A. Ye-, sir.

Q. Have you seen it?

A. Yes, sir.

Q. Do you know its width where it makes out of Red river?

A. No, sir.

Q. You know about its width—something near it?

A. I couldn't say that I know about its width.

Q. Which is the wider, Mack's bayou or Bayou Pierre, where it makes out of Red river?

A. Bayou Pierre is the wider stream.

Q. Which is the deepest at high water, Mack's bayou or Bayou Pierre?

60 A. I never took soundings or tried to find out the depth of Mack's bayou.

Q. Do you know anything about steamboats ever having entered there?

A. No, sir.

Q. Do you know anything about the quantity of water that flows and how it flows down, not only there, but beyond?

A. There is no existing levee between the hills and the levee on the front of Grigsby's island; Wright island and Scrogin island are open; it would take an eight or ten foot levee; that is my recollection; I ran the levels over that front two or three years ago, and my recollection is that it would average about an eight-foot levee across there.

Q. At times of high water how does the water go?

A. It goes out from the Silver lake; it always does.

Q. Does or does not the water run down Red river over Scrogin island and Wright island into the stream Bayou Pierre and down it?

A. Yes, sir.

Q. In high water what proportion of Red River water, do you think, passes through Bayou Pierre as with reference to Tone's bayou?

A. I have taken the cross-section of Red river and I know very closely the cross-section of Bayou Pierre, and they are all about the same.

Q. What is your opinion as to the quantity of Red River water that passes down Bayou Pierre as compared to Tone's bayou as to compared to channel in times of high water?

A. I should judge at extreme high water it would be nearly as high here as at Tone's bayou; when the water is medium high I suppose there is double as much goes through Tone's bayou as this point (Bayou Pierre).

Cross-examination:

61 Q. Have you expressed the opinion in this testimony that you have given that the closing of the outlets of Red river will raise the flood level of the river?

A. I think it will do so; for the present, yes.

Q. That is your opinion?

A. Yes, sir.

Q. Doesn't the determination of the question whether or not this dam across Bayou Pierre will raise the flood level of the waters of Red river so that it will affect Grigsby's island depend entirely upon the carrying capacity of the river, which is one of the boundaries of Grigsby's island?

A. Grigsby's island nor any of those islands will not be affected until the water gets above the natural surface.

Q. Doesn't the determination of the question whether or not this dam in Bayou Pierre will affect the flood level, so far as Grigsby's island is concerned, depend on the carrying capacity of Red river, that is one of the boundaries of Grigsby's island?

A. It does in part depend on it.

Q. Doesn't it largely depend on that?

A. It is the fact of the case.

Q. Is it not true that if the outlets of Red river are closed, that the effect will be to increase the carrying capacity of Red river itself?

A. Yes, sir; eventually.

Q. An effect commences immediately, doesn't it, with a cause?

A. No, sir.

Q. Is the cause, then, without an effect?

A. Until you get the amount of water to cause the effect you would not have an effect.

Q. If these outlets were closed, then, and Red river for a
62 number of years remained at a low stage of water, do you mean to say that the effect would be inconsiderable, but if there was a high stage of water that the effect would be greatly accelerated?

A. If the levees stood after a number of high waters the chances are that the bed of the stream would get lower, and it might eventually carry off all the waters, but in the meantime it might carry off all the houses and all the levees. It is very probable that the levees will break; they have done so.

Q. And it is probable that the river bed will be lowered if the levees stand?

A. Yes, sir.

Q. Then the closing of the outlets will cause all of the levees to break?

A. No, sir.

By the COURT: Don't you allow anything for the scouring power of the river?

A. Yes, sir; that is what I say. When you get a flood level high enough the cutting is not considerable, because it is the banks.

Recross:

Q. The Red river has, according to some of these witnesses, a low stage of water, a medium state of water, and a very high stage of water. Now, assuming that Red river for a series of years doesn't get above a low stage of water, what will be the effect of closing this bayou on the scouring out of the channel of Red river?

A. As long as the water is held within the banks of Red river and it goes over the surface of the islands it will have no effect whatever.

Q. I say that assuming that Red river will remain at a
63 low stage of water, what will be the effect of this dam on the carrying capacity of Red river?

A. I don't think it will affect it.

Q. Assuming that it will remain at a medium stage of water for a series of years, what will be the effect?

A. It probably would lower the river some.

Q. Assuming that we have periodical floods, what would be the effect of such floods?

A. The immediate effect would be to cut the channel and raise the river; the flood level would be higher on account of that outlet being closed.

Q. You say, then, that the effect in closing this dam in Bayou Pierre in low water would amount to nothing; that at a medium stage of water it would lower the bottom some, and that in high waters instead of having that effect it would be to increase the flood level?

A. I say it would cut more, and it would have a higher elevation of water, of course.

Q. Do I understand you to say that as the channel is deepened that the flood level rises higher?

A. No, sir; I don't say that the channel would be deepened.

Q. Then I understand you to say that as the channel of the river is deepened the flood level rises?

A. That is what I have said.

Q. When the high water comes this closure will not have the immediate effect of scouring it out?

A. It will scour and it will rise, and until it does scour it will have a higher flood level.

Q. The immediate effect is to scour?

A. Yes, sir; and the immediate effect is to rise.

Q. It deepens and rises at the same time?

A. Yes, sir; if the water is there; if it is at flood time.

64 Q. What does the carrying capacity of Bayou Pierre or any other stream depend on?

A. It depends on the velocity of the fall and the cross-section of the channel.

Q. What is the cross-section of the channel?

A. The size of the stream, the width and depth, and on the fall which causes the velocity.

Q. Do you know anything about the levels of this country commencing here at this point marked "A" and going down until you come to Tone's bayou as compared with the levels of Red river?

A. No, sir.

Q. Then you are not prepared to give a correct opinion as to what amount of water is carried by either?

A. I have not stated that I am not prepared.

Q. You have said something of a proposed increase in the height of the levees of Grigsby's island; in making that estimate you theoretically brought the levees on Grigsby's island up to the height of this bankment on Bayou Pierre?

A. No, sir; I didn't take the elevation there.

Q. You brought it up to the level of this work; you took the elevation of the work which is in controversy and you estimated what

it would require to put the levees on Grigsby's island up to that level?

A. Yes, sir.

Q. Do you know how much higher the dam is than any known high water?

A. No; I didn't take the elevation of the dam.

Q. Do you know what is the difference?

A. Nothing, except what is allowed for shrinkage; it was considerably higher at that time.

Q. How much?

A. The State allows one-fifth I think.

65 Q. You don't know the difference between these two points?

A. No, sir.

Q. How much higher is the work right here than any known overflow at that point?

A. Three and eight-tenths feet.

Q. How much would those levees on Grigsby's island have to be raised to protect them against overflow?

A. The levees there are supposed to be high enough, I think—in fact were, with the exception of a break that was cut in the levees to save them from the high waters of 1892.

Q. Your testimony is that if the levees had not broken in 1892 that they were high enough to hold the water?

A. The levees proper did not break; it was at a place where it had been cut away for a wagon road, and when they filled it up the earth was new and it washed out.

Q. Were the levees at this place in 1892 high enough to prevent the water coming on that place?

A. Yes, sir.

Q. Now, then, you say that it will take three feet to bring the levees of Grigsby's island up to a level with this one?

A. Yes, sir; 3.3 feet.

Q. And you say that this levee at the bayou is between three and four feet higher than any known high-water mark?

A. Yes, sir; 3.8 feet.

Q. You know nothing of your own knowledge about the names given here?

A. No, sir; I know that Old Bayou Pierre as being on the United States survey. I never named any of them.

Q. Do you know their names by being a resident of this community?

A. Yes, sir.

Q. Without reference to that map you would know that

66 this was Old Bayou Pierre?

A. Yes; I have heard it so designated.

Q. How long have you been living in this community?

A. Eleven or twelve years. The city map so designates it.

Q. Who did you ever hear designate that as Old Bayou Pierre?

A. I have heard numbers.

Q. Then you are familiar with the whole business, at least by statements of inhabitants?

A. I have given it no particular study.

Q. What is your information as to the name of this stream? At the point "A" there seems to be another stream which unites at a short distance below the bluffs with what you call Old Bayou Pierre and comes on down and runs all round here. What stream is that?

A. I don't know, sir.

Q. How is it that you know this little section of a stream and don't know that one?

A. I have seen it so designated on the maps and heard it spoken of.

Q. You have just heard of that little section of that considerable stream; that is the only portion of this stream that you have heard spoken of with reference to name?

A. I have seen that part of it on the map so marked. I don't know how far it extends.

Q. Have you got it from general information or from residents here?

A. That is my recollection.

Q. And they only spoke of that little section by name?

A. I don't know whether they did or not.

Q. You don't know the name of this stream?

A. No, sir; that is my recollection, that that is the part that was designated as such.

Q. There is no designation of the balance of it?

67 A. I expect there is. I never found it.

Q. You had no knowledge about this part of it at all?

A. I know that some of those streams they call Old river, but I didn't know which, and I didn't know but what they were all Old river, and therefore I have not done so, except that little piece there.

Q. Do you know that as a matter of fact Red river once ran down through what you call Old Bayou Pierre and down past the Hart Island place and along here and into Red river away up here again?

A. No, sir; I don't know that.

Q. Your only knowledge is in regard to this little point here. That is a map of the country, a correct map of that vicinity?

A. It is correct so far as the relative locations of streams, bayous, etc., are concerned.

Q. It is a copy of a map, isn't it?

A. No, sir; it is a sun copy of a map that I made myself. I have all the original notes here in this book.

Redirect examination:

Q. Did you take the depth of the stream at the mouth of Old Bayou Pierre at that point?

A. No, sir; but it — very shallow there. I walked across it.

S. N. KERLEY, witness for the plaintiff, being duly sworn, testified as follows:

Q. You are the secretary of the Caddo board of levee commissioners?

A. Yes, sir.

Q. I will ask you if as such secretary you are charged with keeping the minutes of the board.

A. Yes, sir.

Q. The minutes of the board have been regularly kept since its formation?

68

A. Yes, sir.

Q. Do the minutes of the board show or had they, as a matter of fact, authorized the building of this dam across Bayou Pierre?

Objected to unless the minutes are produced. Sustained.

Q. Will you produce the minutes?

A. Yes, sir.

(The witness was excused, subject to recall upon his return with the minutes.)

B. F. WILKERSON, witness for the plaintiff, being duly sworn, testified as follows:

Q. Where do you reside?

A. I live down near Tone's bayou.

Q. In Caddo parish?

A. Yes, sir.

Q. On Red river?

A. Yes, sir.

Q. Your occupation is what?

A. Farmer.

Q. Does Tone's bayou run out of the present Red river or the Old river?

A. I think Tone's bayou proper makes out of Old river.

Q. The Scopini cut-off was made how long ago?

A. I don't know. That was before I knew the country.

Q. How long have you known the country?

A. Twenty-six years.

Q. What is the length of Tone's bayou?

A. It is not more than a mile long.

Q. And what is the length of Old river from where Tone's bayou lets out of it to the present Red river?

69

A. About a mile and a half.

Q. Is or is not it a fact that Old river, lying between the present Red river and the source of Tone's bayou, is filling up?

A. Yes, sir; it has been, very fast.

Q. Becoming a shallow stream?

A. Yes, sir.

Q. How long has that process been going on?

A. I don't know exactly; to my observation, since 1884.

Q. And it is at present rapidly filling up?

A. Yes, sir.

Q. How low does it get in low water? Give some illustration of it.

A. It dries entirely up before the water gets to the low-water mark at Shreveport. I don't know exactly to what stage it gets.

Q. It has filled up, you say, about twenty feet in the last two years?

A. Yes, sir.

Q. The other part of the Old river, the return, is that filling up or not?

A. Yes, sir; that is filling up a great deal more. The water that passes through Tone's bayou goes through from Old river.

Q. The cut-off is becoming the main river, and the Old river is drying up?

A. Yes, sir.

Plaintiff filed in evidence and read the depositions of the witness Geo. H. Russell, taken by consent on behalf of the plaintiff, and the same *is* marked "C."

Plaintiff filed in evidence and read the depositions of the witness W. T. Boardman, and the same are marked "D."

Plaintiff filed in evidence and read the depositions of the witness W. P. Scarborough, and the same are marked "E."

It is admitted by counsel for the defendants that the plain-
70 tiff, Mrs. Lillian W. Egan, was born White, daughter of Reuben and Martha L. White.

WILLIAM GRAY, witness for the plaintiff, being duly sworn, testified as follows:

Q. Where is your residence?

A. Red River parish.

Q. What property, if any, have you had on both sides of Bayou Pierre or been interested in?

A. I don't know that I could describe the property.

Q. You have been interested in property on both sides of it?

A. Yes, sir.

Q. How many years have you been residing, off and on, upon Red river?

A. All my life.

Q. What do you know about the comparative depth of Bayou Pierre at the present stage of Red River water as to its depth in previous years, before this dam was placed across Bayou Pierre?

—. When the water was at its highest or about at its highest, in December, the water was considerably lower in Bayou Pierre then it was in previous years; I expect probably seven or eight feet.

Q. What is the comparative depth of Bayou Pierre at this time as compared to it in previous years at the stage of water Red river is now?

A. Five or six feet lower.

Q. At this time than it was at the same stage of water in previous years?

A. Yes, sir.

Q. What do you say as to Bayou Pierre having been in previous years navigable at the present stage of water in Red river?

71 A. I don't know that a boat could have gotten up as high as our property at this stage of water; I don't know that it could have done it, but I expect that she could have come up that high.

Q. What do you say as to its being navigable since this dam was put there?

A. I don't think it is possible for them to get up there now.

Q. Has or has not the amount of water in Bayou Pierre been largely decreased by the placing of this dam across Bayou Pierre?

A. It is due to some cause; whether it is the dam or not I can't say, but I would infer that that had something to do with it.

Q. Have you been doing any levee-work recently?

A. Yes, sir; since about the first of October I have been engaged in it.

Q. What has been the relative height of Red river above Tone's bayou since the closing up of Bayou Pierre in the water of December, 1892, compared with that of previous years at the same stage of water at Shreveport in the river?

A. I don't know what the height was in previous years, but levees that held in the spring of 1892 were about two feet above the water in December, 1892. The levee in front of us, where we are now at work, held the water a month or two in the spring, and it was about a foot or two above the water in December.

Q. What was the difference between the height of water above Tone's bayou in December and the spring rise in 1892?

A. About two feet; probably a few inches more; not over two feet and a half.

Q. And the difference between what it was in the spring rise and what it was in the December rise?

A. I would say about two feet; I don't know exactly.

Q. You don't know what the difference was between the

72 spring rise of 1892 and the rise of December; do you know what the difference was here at Shreveport?

A. No, sir; I don't know the difference at Shreveport. I just know that because we were somewhat interested in the levee in front of us, that protected the work.

Q. How deep is the water in Bayou Pierre and what is the stage of water now in comparison with other years?

A. It is a great deal lower.

Q. At the same *guage* it is now?

A. Yes, sir.

Cross-examination:

Q. What is your age?

A. I am about thirty years of age.

Q. Where do you reside?

A. Red River parish.

Q. What part of Red River parish?
A. Near East Point.
Q. On Red river?
A. Yes, sir; about six or eight mile- below the Caddo line.
Q. You speak of owning an interest in a plantation on Bayou Pierre; how far is that below the mouth of Tone's bayou?
A. It is not far below the Caddo line, four or five miles.
Q. How far from Red Bluff?
A. Eight miles below Red Bluff.
Q. Is that the same place in which Scarborough is interested?
A. Yes, sir; I sold out my interest in that to him.
Q. Did you ever reside on Bayou Pierre?
A. Yes, sir; I spent most of the time there for the last three or four years.
Q. On this place?
A. Yes, sir.
73 Q. What is the highest point of navigation on Bayou Pierre for the last three or four years?
A. I don't know whether it was Red Bluff landing or Frierson's landing the boat went to last year; I think it was Frierson's.
Q. Was that above or below Red Bluff?
A. I don't know whether his landing is Red Bluff or just below Red Bluff. It is about seven or eight miles above the place that I speak of.
Q. What was the flood level at East Point at the highest level there in 1892?
A. In 1892 it went over the bank in most places; a few little ledges it did not go over.
Q. That was in the spring of 1892?
A. Yes, sir.
Q. Do you know how much it was in feet?
A. No, sir; I don't know what the guage was.
Q. The highest flood here was 35½ feet at Shreveport; now, at East Point the water went over the bank?
A. Yes, sir.
Q. About how much?
A. It varied in depth. Some places it was two feet and some an inch, and some it didn't go over at all—the knolls.
Q. About what was the average depth?
A. Not more than a foot, say. I suppose the average depth would be hardly a foot.
Q. In 1892, the highest flood at Shreveport being 35½ feet, the highest flood level at East Point would carry the water over the banks something like a foot. Now, suppose we should have 35½ feet this year at Shreveport, would there be exactly the same amount of water at East Point as it was in 1892?
A. I don't know, sir. If the levee broke in the same
74 places I suppose it would.
Q. Your idea is that if you get the flood level at a certain point in a certain year and then get the highest flood level at an-

other given point, and for all succeeding years the flood level will remain the same in proportion?

A. No, sir; I don't mean to say anything of that kind.

Q. As a matter of fact the flood level will not indicate what the flood level will be at another place?

A. It doesn't always show that.

Q. It is no criterion, is it, at all?

A. No, sir.

Q. Do you know at what point Bayou Pierre leaves Red river?

A. Yes, sir.

Q. Where is it?

A. About three miles below Shreveport.

Q. And where does it go into it again?

A. It re-enters Red river just above Natchitoches. The greater part of the water, though, goes through the Wincey.

Q. Between the points where it enters and leaves Red river, how many outlets are there?

A. Grand Bayou and the Wincey, I think, are the principal ones.

Q. Only two. Name all you know.

A. There are Jones bayou, Bayou L——, Grand bayou, and the Wincey, are the principal ones, I think. There are several small, minor bayous

Q. When you say that Bayou Pierre is a navigable stream, what do you mean?

A. They have to come in through the Wincey and go back the same way. The Wincey is an outlet that comes into the river through Bayou Pierre.

Q. It is an outlet through which the waters of Bayou
75 Pierre pass back into the river?

A. Yes, sir.

Q. From the Wincey, what is the course pursued then?

A. They come in through the Wincey and go back through the Wincey.

Q. Coming up this way, how do they get into Red river?

A. They can't come this way and get into Red river.

Q. Where is Tone's bayou?

A. It is about thirteen miles from Shreveport.

Q. Don't they come through Tone's bayou going up and down?

A. No, sir; they go back through the Wincey; they come and go through the Wincey.

Q. When they come through the Wincey they go back through it?

A. Yes, sir; they have to return the same way they came in.

Q. The closing of the upper end of Bayou Pierre, doesn't it improve the navigation of Red river by increasing the volume of water in the main channel of Red river?

A. I suppose it would, if it shuts the water out of Bayou Pierre.

Q. The main stream is improved in closing Bayou Pierre?

A. Part of Red river is, but the lower part would be improved by the water passing through Bayou Pierre. It is much nearer through Bayou Pierre than it is through the channel of the river. I think it is about fifty or sixty miles nearer.

Q. You say that the closing of Bayou Pierre increases the volume of water in Red river?

A. For part of the distance, up between Bayou Pierre and the Wincey; it improves navigation in Red river part of the way.

Q. How far?

A. I don't know the exact distance between the mouth of the Wincey and the mouth of Bayou Pierre; Red river is much further around the channel than it is down through the Wincey.

Q. In other words, water passing down the channel of the
76 river has to go about sixty miles further than it does if it passes through Bayou Pierre back into the river through the Wincey?

A. Yes, sir.

Q. Do you know where Tone's bayou is?

A. Yes, sir.

Q. Where is it?

A. About thirteen miles below town.

Q. Is it navigable?

A. No, sir; it is utterly impossible for any kind of a craft to pass through it.

Q. They cannot go up it?

A. No, sir; they cannot pass anywhere.

Q. Why not?

A. Because it is obstructed with logs and trees.

Q. Do you think Bayou Pierre is obstructed with logs and trees?

A. No, sir; Bayou Pierre, I think, has a channel washed around the raft.

Q. Did you ever know a steamboat to pass through Bayou Pierre except above Tone's bayou?

A. No, sir.

Q. You have never known a boat to go through Tone's bayou?

A. No, sir; I have never known one to be in Tone's bayou at all.

Q. What was the greatest depth of water in Bayou Pierre below Tone's bayou where the channel was unobstructed in December, 1892?

A. I don't know, sir; I never sounded it; in some places it is shallower than in other places, where a hole is washed out, and then in some places it is obstructed.

Q. What would you call an obstruction?

A. I would call an obstruction drifts of some kind.

Q. Ain't there parts of Bayou Pierre below Tone's bayou
77 that are not obstructed?

A. There is no obstruction at all to prevent boats passing as high as Frierson's.

Q. How deep was the water in the unobstructed parts of Tone's bayou in December, 1892?

A. It varied from eight to sixty feet.

Q. Wasn't that a sufficient depth to float a steamboat?

A. Yes, sir; I suppose it is; Bayou Pierre is very narrow in some places; the water may be plenty deep and yet not be wide enough to carry a skiff.

Redirect examination:

Q. I believe you said that there was nothing like the amount of water in the swamps at the usual stages of high water?

A. No, sir; there was no water at all in the swamps in December, 1892.

S. N. KERLEY, witness for the plaintiff, being recalled, testified as follows:

Q. You have the minutes of the levee board in your possession?

A. Yes, sir.

Q. As kept by you?

A. Yes, sir.

Q. Have you examined them?

A. Yes, sir.

Q. I will ask you to state whether or not those minutes show whether or not this dam being built across Bayou Pierre was done by authority of or any resolution of this board?

A. There is no record of it on these minutes.

Q. I will ask you if from those minutes it appears that the Caddo levee board have advertized for bids for the letting of a contract, or have let a contract, for the building of this dam.

A. No, sir; we have never advertised for them; there is
78 no record of it on the minutes.

Q. You kept those minutes?

A. Yes, sir.

Q. Those minutes present a fair and true report of all that was done at the meetings of this board and they are full?

A. Yes, sir; they are full as adopted.

Q. I wish you would state when the Caddo levee board was organized.

A. My recollection is Aug. 17th, 1892. That is the date of the first meeting; I was away from here when they organized.

Q. They have let contracts for the building of other levees in the parish?

A. Yes, sir.

Cross-examination:

Q. I will ask you to look at the minutes and see when the board advertised for the first contract let out by it for other levees.

A. On Oct. 20th, 1892, a resolution was introduced instructing the State board of engineers to give us a report and recommendation on a certain line of levees. Then follows the advertisement of those since leveed.

Q. When was that?

A. Oct. 20th.

Q. They authorized the location of it, then?

A. Yes, sir; but the bids were advertised for Nov. 12th, I think. That is the date of the only reference I have here to it.

P. B. CASH, witness for the plaintiff, being duly sworn, testified as follows:

Q. Your occupation is that of a planter?
A. Yes, sir.
Q. You are acquainted with the stream Bayou Pierre?
79 A. Yes, sir.
Q. Are you acquainted with Grigsby island, the plantation of plaintiff?
A. Yes, sir.
Q. I will ask you what in your opinion would be the effect upon that plantation of damming Bayou Pierre, first as regards the drainage of Grigsby island. Does or does not Bayou Pierre serve as a natural drain to Grigsby island?
A. It serves as a great benefit to it in draining it.
Q. The effect of closing it would be to stop that drainage?
A. Yes, sir. I consider it would about ruin the place.
Q. It would stop the drainage?
A. Yes, sir.
Q. I will ask you this: Does or does not Bayou Pierre carry off a large volume of water from Red river in high water?
A. Yes, sir.
Q. At this point?
A. Yes, sir.
Q. Now, the damming of Bayou Pierre, what will it do with that water: what will be the tendency?
A. It holds it up and throws it over on Grigsby's island a great deal more than it would if the bayou was open.
Q. Would or would not the Grigsby island overflow at a lower stage of water in Red river by the damming of it?
A. Yes, sir; it would make it a great deal worse.
Q. What would be the effect on that place of building a high enough levee all around it to shut the water out?
A. It would make a basin out of it. There is no way for the water to get off.
Q. What effect would that have upon the place?
A. You might say the effect on a place—thrown in a basin shape.
80 Q. Do you know what the effect has already been on the market value of this place by the building of this dam?
A. Grigsby's island, I think, has about seven hundred acres of open land. I would say the place would be damaged fully $20,000 or $25,000.
Q. Would it affect also its rental value?
A. I don't suppose anybody would want to rent it at all in that fix; at least I wouldn't, I know.
Q. In order to keep off the water by the building of this dam, would it lead to increasing the levees already thrown around Grigsby's island?
A. Yes, sir.
Q. Would it be necessary to levee entirely around it?

A. I don't see how you could keep it off any other way. The bayou running around it, there would have to be levees all around it.

Q. Are you acquainted with Tone's bayou?

A. Yes, sir.

Q. Have you or not a plantation in the neighborhood of that bayou?

A. Yes, sir. The back of it is about a mile from Tone's bayou.

Q. Does Tone's bayou let out of the main channel, or Old river?

A. It makes out of Old river.

Q. What is the condition of the stream—Old river? Is it or not filling up?

A. Yes, sir; it is filling up very fast.

Q. Do you know whether or not sand bars are forming in it?

A. Yes; they are forming in one prong of the mouth. It is forming in the lower mouth of Old river, and also at the upper mouth of it, where Tone's bayou is, a continuation of Tone's bayou is through Old river.

Q. It is Old river from the present channel of Old river down?

A. Yes, sir.

81 Q. You say it is filling up very rapidly?

A. Yes, sir.

Q. I will ask you what, in your opinion, would be the effect on the stage of water in lower Bayou Pierre, below the junction of Tone's bayou and Bayou Pierre, by the closing of this Bayou Pierre and the building of this dam closing up Bayou Pierre?

A. It makes less water in Bayou Pierre, through the main Bayou Pierre.

Q. It makes less water below this junction of Bayou Pierre all the way down to Bayou Wincey?

A. Yes, sir; I suppose it would.

Q. I will ask you if you know whether there was less or more or the same amount of water in Bayou Pierre in December, 1892, with the same stage of water then, as there was previous years.

A. Yes, sir; there was a great deal less in lower Bayou Pierre—that is, it was not as high on my back levee.

Q. How was the front of the main channel of Red river in the early part of 1892 compared with previous seasons at the same stage of water?

A. We had in December three and a half feet of bank up to the high water of 1892; a foot at the very outside.

Q. All the water in Bayou Pierre behind you was very much lowered?

A. Yes, sir; very much lower against my back levee.

Q. And that was below this junction of Tone's bayou and Bayou Pierre?

A. Yes, sir.

Cross-examination:

Q. Was Bayou Pierre below Tone's bayou overflowed in December, 1892?

A. It was breaking out through those washouts that makes out around those reefs.

82 Q. It was overflowed and back-up against your back levee?

A. Yes, sir.

Q. How far is your back levee from the channel of Bayou Pierre?

A. It is about a mile and a half or three-quarters, I reckon.

Q. Grigsby island is level land in Red River bottom, isn't it?

A. Yes, sir.

Q. Before this dam was put up Grigsby island was entirely surrounded with flowing water, wasn't it?

A. Yes, sir; around the bayou.

Q. Then Grigsby island was a basin, anyway, before this dam was put up?

A. No, sir.

Q. Wasn't the banks the highest portion of Grigsby's island?

A. Yes, sir; but they could cut through them.

Q. The banks were the highest portions of the island?

A. Yes, sir; it is that way on all places next to the river; you find the banks higher.

Q. Or next to Bayou Pierre?

A. Yes, sir.

Q. Consequently the general formation of Grigsby's island was that the lands sloped back from the banks?

A. Yes, sir.

Q. Now you say that you have known that plantation for a long while.

A. Yes, sir: I have known it a good while.

Q. About what was that plantation worth in 1888?

A. I suppose it would be worth $30,000 or $35,000, the amount of open land they have got there.

Q. We had big overflows in 1890 and 1892.

A. I think we did.

Q. What was the effect of those overflows on the value of that land; didn't it greatly reduce the value of Red River lands?

83 A. Yes, sir.

Q. Wasn't the effect of the overflows of 1890 and 1892, and particularly 1892, to reduce the value of Red River lands at least one-half?

A. Where they were overflowed and no protection from levees or anything of that kind and where they were allowed to be washed there were a good many places that were not hurt, just simply the crops on them.

Q. Didn't the overflows of those years have the effect of greatly depreciating the value of all Red River lands generally?

A. Not all of them.

Q. Generally, I said.

A. Yes, sir; some of them that overflowed increased their value, too.

Q. What was the general effect of the overflow; do you think it benefited lands?

A. In this particular instance it did not; as a general thing it impaired the value of them.

Q. Very greatly, did it not?

A. Yes, sir; in localities it did.

Q. This Grigsby's Island place was not overflowed in 1884?

A. I don't remember whether it was or not. It has been several years since I have been on that place.

Q. That Grigsby's Island place had not been overflowed for a number of years until 1890?

A. I never heard of it.

Q. It was regarded as a place reasonably above overflows?

A. Yes, sir; considered a right high place.

Q. It was overflowed in 1890 and 1892. What has been the effect of those overflows as to its value; did it increase it or diminish it?

84 A. I suppose it must have on that place. I don't know whether it would have done any good or not. I haven't been over there to see.

Q. You can express no opinion about it?

A. I would have to go over it before I could tell you how much it was damaged.

Q. I asked you whether or not, in your opinion, the overflows of 1890 and 1892 impaired or increased the value of that plantation.

A. It might have increased it or decreased it.

Q. You can't say which?

A. I couldn't tell you.

Q. Can you tell whether or not overflows are beneficial or injurious generally to Red River plantations?

A. It is just the way they come.

Q. It is difficult to say, then?

A. Yes, sir; if you get them from a certain way they are a benefit, and another way very detrimental.

Q. Suppose they come from the south?

A. It is owing to whether it is overflowed down there enough to push the water up to the north.

Q. You are unable to form any opinion as to it?

A. If the water runs over and across a place it injures it; but if it is surrounded by water and the back water backs up over it, it is beneficial because it leaves a deposit.

Q. How about cultivating such land?

A. If you lose the crop of course it is a loss.

Q. You have stated that after this dam was put up that the value of this plantation is nothing, and you have stated that before the dam was put up it was worth $30,000 or $35,000; do you think that plantation could have been sold to anybody after the overflow of 1892 for $30,000?

85 A. I don't know whether it could or not; a man owning a place and what he can get for it is a different thing.

Q. Was it worth $30,000 after the overflow of 1890?

A. It would be worth that much to the man that owned it.

Q. Then the overflow of 1880 did not affect the value of the land?

A. I reckon it must have a little.

Q. Then how can it be that the figures remain the same?

A. Probably the man that owns it would not take that for it; I couldn't tell you unless I was on the place and could see what effect the overflow had on it.

Q. I am asking you your opinion of the value; consequently the overflow of 1892 didn't affect its value?

A. No, sir; I told you that that plantation was worth before—I considered it worth about $30,000 or $35,000 when it was in good fix and not speaking of since the overflows; I say that the overflows would damage it $20,000 or $25,000.

Q. What did you say?

A. I always considered the plantation to be worth $30,000 or $35,000, and since they put this dam up here and shoved this water up on it that I would consider the place to be damaged $20,000 or $25,000 by that dam; by that dam and high water caused by it.

Q. When was that dam put up?

A. I don't know; some time ago; it has been put there in the last two or three months.

Q. Has Grigsby's island been overflowed since that dam was put up there?

A. I don't know; I don't think it has, because we have not had high water enough to put it up.

Q. Then the dam has not, up to date, resulted in the overflow of Grigsby's island?

86 A. No, sir.

Q. Suppose that dam was not there at all, what would be the value of Grigsby's island?

A. It would be about as much as it ever was.

Q. Then the overflows of 1890 and 1892 affected the value of the place?

A. If it didn't wash it any I suppose it did.

Q. Do you know about Bayou Pierre being a navigable stream?

A. That was long before my time.

Q. You were not here when it was a navigable stream?

A. I have heard of boats going up it; I don't know anything about it only what I heard.

Q. What do you know about it of your own knowledge?

A. I don't know whether it is a navigable stream or not.

Q. Don't you own a plantation below that?

A. Yes, sir.

Q. How long have you owned that?

A. Since 1858, I believe.

Q. You don't know that Bayou Pierre is a navigable stream only from what you heard?

A. No, sir.

Redirect examination:

Q. Do you know the size of Bayou Pierre?

A. Yes, sir.

Q. What is the general depth of it?

A. I have never sounded it; it is a very large bayou, and from all appearances is a very deep bayou.

Q. About how wide is it?

A. It is as large as Red river down there anywhere in that little river.

Q. You frequently come from your place towards Shreve-
87 port across Bayou Pierre?

A. Yes, sir.

Q. Whereabouts did you cross it?

A. It was at the old Norris ferry, I think, they called it. That used to be our road from down there to town. We didn't come up the river route.

Q. How far is that above what is called Red Bluff, do you know?

A. From Norris' ferry to Red Bluff, I suppose, it is 10 or 12 miles above Red Bluff.

Q. Have you any idea how far it is from this dam to where you crossed it?

A. It is about ten miles, I suppose.

Q. How far above Red Bluff do you think it is—that ferry?

A. I think it is about eight or ten miles to go around the bayou.

Q. Have you any idea about the depth of Bayou Pierre where you crossed it on this ferry-boat?

A. Yes; I know that in very low water they could put the boat acros- with poles, and in high water they had to use oars. I never saw it measured.

Q. Was it too deep ordinarily for a pole to be used?

A. Yes, sir.

Q. What was the length of the pole?

A. It must have been fifteen or twenty feet, I reckon.

Q. What was the width of the bayou there at the ferry?

A. It must have been three hundred yards.

Q. If Grigsby's island was entirely surrounded by water before the building of this dam, I will ask you if Bayou Pierre did not serve to carry off this surplus water, so that with the then existing levees it was reasonably above overflow.

Objected to.

88 Q. Do you know that Grigsby's island did overflow prior to 1890 or 1892?

A. I never knew of its overflowing.

Q. Do you know the cause of its overflowing in 1890 and 1892?

A. They had too much water, I reckon.

Q. Do you know whether or not the water went over the levees?

A. I suppose it did.

Q. Do you know whether or not the levees were cut, as the cause of its overflowing?

A. I don't know.

Recross-examination:

Q. When were you in the habit of crossing it at Norris' ferry?
A. It has been several years ago.
Q. How many years ago?
A. Twelve or thirteen years.
Q. Is there any ferry there now?
A. I think there is an old flat boat there now that they use.
Q. It is no public ferry like it was then?
A. I don't know. I haven't lived there in ten years.
Q. In testifying as to the condition of the bayou at the ferry you say what you knew ten or twelve years ago?
A. Yes, sir.

W. F. DILLON, witness for the plaintiff, being duly sworn, testified as follows:

Q. You reside in Shreveport?
A. Yes, sir.
Q. What is your present occupation?
A. Agent for the Red River and Coast Line of steamboats.
Q. How long have you been in that occupation?
A. A year and a half or two years.
89 Q. Have you been a steamboat captain?
A. Yes, sir.
Q. For several years?
A. Yes, sir.
Q. Do you know Bayou Pierre?
A. Yes, sir.
Q. Haven't the different boats of your line in the past several years made trips into Bayou Pierre by the way of Bayou Wincey?
A. Yes, sir.
Q. Landing at different points on Bayou Pierre, hauling out freight and cotton and other produce?
A. Yes, sir.
Q. Have they been doing so for a good many years?
A. Yes, sir; the boats have been going in there for a number of years at different times.

Cross-examination:

Q. Is Bayou Pierre navigable as high as Tone's bayou is, where it enters Bayou Pierre? Up to what point is Bayou Pierre navigable, to your knowledge?
A. Frierson's landing, if that is Bayou Pierre. I don't know whether that is called Bayou Pierre up in there. Boats have gone as high as Frierson's landing.
Q. You carried boats in there yourself?
A. I went through Bayou Wincey into Bayou Pierre, and then through some lakes, and then into what I believe they call Bayou Pierre, again to where Scarborough's West Point landing is; that is as high as I have been.

Q. Did you ever know of the upper portion of Bayou Pierre as being navigable?

A. No, sir; not of my own knowledge.

Q. Have you ever heard of it?

90 A. I have heard that boats were up in there some place.

Q. Did you ever hear of boats navigating Bayou Pierre from its upper end down?

A. No, sir.

Q. The navigation, so far as you heard, is below Tone's bayou?

A. Yes, sir; I know where they say it leaves the Old river.

Q. You have not been navigating the Red river before the Scopini cut-off was made?

A. No, sir.

Q. Consequently you have not seen Tone's bayou?

A. No, sir.

Q. You know where the Scopini cut-off is?

A. Yes, sir.

Q. You have navigated what you call Bayou Pierre up to that point?

A. No, sir.

R. S. ELLIOTT, witness for the plaintiff, being duly sworn, testified as follows:

Q. How long have you resided in Caddo parish?

A. About forty-two years.

Q. Do you know that stream called Bayou Pierre?

A. Yes, sir.

Q. When you first came to the parish forty-two years ago was that navigable for steamboats, coasting vessels up from Grand Ecore?

A. There were small boats running up the lower part of it as far as what they called Red Bluffs.

Q. I will ask you if you have ever known steamboats to come higher up in Bayou Pierre than Red Bluffs.

A. No, sir; I don't know of any but the one they brought up there to clean it out. Mr. Hinkle brought it up.

91 Q. How far is that from Shreveport?

A. About nine or ten miles.

Q. That was straight up Bayou Pierre?

A. Yes, sir.

Q. Not through Tone's bayou?

A. No, sir.

Q. What boat was that Mr. Hinkle brought up there?

A. I forget the name of it; it was a snag-boat, I think.

Q. Do you know of any other boats that came up that bayou?

A. There was a small boat came up there, I believe, called the Belvidere; I can't be positive, it is so long ago.

Q. Do you know the stream called Tone's bayou?

A. Yes, sir.

Q. How long have you known it?

A. I have known it ever since 1851.

Q. What was the size of Tone's bayou at that time when you first knew it?

A. It was very small.

Q. About how wide from bank to bank?

A. Not much wider than this room (about 35 feet).

Q. Could a boat go through it?

A. No, sir; a boat could not go through it.

Q. Do you know whether or not boats did go through there at that time?

A. No, sir; I am satisfied they did not.

Plaintiff filed in evidence the depositions of the witnesses Sam. Lisso, Chas. Egan, M. P. Bosley, T. R. Armistead, Henry Marston, John Marston, J. M. T. Elliott, Wm. Wilkinson, Fred. Wilson, and the same are marked "G."

Plaintiff filed in evidence the depositions of the witness A. J. Fortson, and the same are marked —.

92 Defendant objected to the answer of the witness to interrogatory 6th as follows: "Int. 6th. Do you know whether a steamboat has ever gone entirely through Bayou Pierre from its source to its mouth, its entire length? And, if so, please give name of boat and particulars." A. Don't know of my own knowledge, but it was generally the steamboat Robert Lisle went through in the year 1851 or 1852.

Objected to on the ground that the answer is hearsay; which objection was by the court sustained; to which ruling the plaintiff excepted.

T. F. BELL, Esq., witness for the plaintiff, being duly sworn, testified as follows:

Q. This is a suit to enjoin the building of a dam across Bayou Pierre at a point below Shreveport on the ground that the plaintiff has rights of servitude, drainage, etc., in it, and interfering with her vested rights in that regard, and that the effect of a closing it will be to damage her property; that she is the owner of a valuable plantation there worth $30,000, and that the effect of this dam will be to materially damage her place; the damages are variously estimated so far at from $15,000 to $20,000. I will ask you what would be a reasonable attorneys' fee for suing out and prosecuting this injunction suit.

A. I don't think $1,000 would be too much.

Cross-examination:

Q. What do you think would be a reasonable fee for counsel for defendants in dissolving this injunction?

A. What are the alleged or stated interests of the defendants?

Q. They are enjoined from building this dam on various grounds and they are sued for these damages; Hart is one of the de-

93 fendants, and the only defendant who has any interest in the matter.

A. Are you enquiring my opinion as to dissolving the injunction or simply for prosecuting the claim for damages?

Q. You can separate them; the whole suit is on the maintaining or dissolution of the injunction.

Q. Do you want to know my estimate of the attorneys' fees for dissolving the injunction? What interest have you simply in that part of the case?

Q. By dissolving the injunction we get rid of this enormous claim for damages, and by dissolving the injunction we recover whatever damages we may suffer. What would be the fee for that?

A. You want my estimate of the attorneys' fees for defending this entire action?

Q. No, sir; we want it for dissolving the injunction.

A. By reason of which you claim you are damaged $1,500, besides the attorneys' fees?

Q. Yes, sir. What do you consider a proper fee for dissolving the injunction?

A. I would say the attorneys' fees for dissolving the injunction $150 or $200.

Q. What do you base that estimate on?

A. In a considerable measure on the amount of the damages that you claim.

Q. You estimated that the fees for the attorneys for obtaining this injunction would be $1,000, did you not?

A. Yes, sir.

Q. How do you make such a great difference in the two cases?

A. By my taking his estimate of damages sustained and the statement of interest on the other side.

94 Q. How can there be more involved in maintaining than dissolving that injunction?

A. When I gave my estimate for the services in dissolving the injunction I did not include the services you may render your client on the merit of the case.

Q. In giving your estimate of the fees of the other attorneys you did?

A. Yes, sir. I don't know whether he is entitled to recover or not of the defendants.

Q. When you said that the attorneys for the plaintiff would be entitled to a fee of $1,000 you included in that all the services that they render in the transaction of this suit?

A. Yes, sir.

Q. Then about what fee would they be entitled to for simply making this injunction good?

A. Is that the whole case?

Q. If it is the whole case one way it is the other way, isn't it?

A. Not necessarily. I have given you my answer limiting the attorneys' fee simply to that injunction; if you want me to give you an estimate for your fees * * *

Q. I am not talking about my fees, I am talking about what would be a proper fee for the counsel for the plaintiff for maintaining the injunction.

A. I said $1,000. That is their whole case as I understand it.

Q. Why isn't it the whole case for the defendant?

A. Because you put in a reconventional demand. I have given you my estimate for dissolving the injunction; now I can give you my estimate for your services for the entire case.

Q. I am not asking about my services. I will ask you again what will be a reasonable fee for the attorneys for the plaintiff for maintaining the injunction sued out in this case?

95 A. I have answered that question; I said $1,000 would be a reasonable fee.

Q. In making that estimate you included all the services which they rendered and are to render?

A. Yes, sir.

Q. And you think that $1,000 in this case is a reasonable fee for the counsel for the plaintiff to charge the plaintiff?

A. Yes; I understood that that was the whole case.

Q. In your estimate you consider that that is a fair charge for the attorneys to charge their clients in this case in the event of success?

A. Yes, sir; as far as it has been stated to me.

Q. Now, on the same basis, what, in your opinion, would the attorneys for the defence be entitled to?

A. I have answered it; $150 or $200 for dissolving the injunction.

Q. I am not asking about the injunction. On the same basis on which you have estimated the fees of the counsel for the plaintiff, what would you estimate the fees of counsel for the defendants on the whole case?

A. On the whole case it is worth just as much.

Q. Simply to dissolve the injunction you think it is worth from $150 to $200?

A. Yes, sir.

Redirect examination:

Q. I will state to you that the action of the plaintiff is twofold—first, a plain suit for a writ of injunction enjoining the building of this dam across Bayou Pierre, alleging that the effect of it will be to damage her property in a large amount, say $20,000 or $25,000. Those are the facts on which we base the claim for damages. In addition to that, we sue for damages already actually sus-

96 tained and that will be sustained if the dam is left there, in the sum of several thousand dollars; but suppose that feature of the demand had not been there, I will ask you if on that feature alone $1,000 would be a reasonable fee.

A. I think so.

Q. I will ask you if the customary fees as charged by the Caddo bar are not largely based upon the amount involved in the suit.

A. It always enters into my own estimate. I would never charge a man the same for a $100 case in the justice court as for a $10,000

case in the district court, even if the case in the justice court required twice the amount of research and labor as the other one.

Q. You are a practicing attorney at the Shreveport bar?

A. Yes, sir.

Q. And have been for many years?

A. Yes, sir.

Q. Isn't that the custom of the bar generally?

A. I think it is. I know it is mine, and I think it is general.

Q. I will ask you this further question: If, as far as the amount of professional labor is concerned, in bringing a suit or defending it, an attorney is frequently called upon for a larger amount of labor and a greater degree of professional learning in a $100 than in a $10,000 suit.

A. Of course that may occur; yes, sir.

Q. Then the interest set forth in having this dam closed is the basis of your calculations?

A. Yes, sir.

Q. Then wouldn't the interest of the defendant in being allowed to put it there be his interest in it?

A. Yes, sir. That is covered in my answers.

Q. He says in his answer that he has a contract to build
97 this dam and a long levee, amounting to $4,000, and he says by loss of time, attorneys' fees, etc., in the suing out of this injunction he has been damaged to $1,500, and on that you base the fee of $150 or $200.

A. Yes, sir.

S. J. WARD, witness for the plaintiff, being duly sworn, testified as follows:

Q. You are acquainted with Tone's bayou and know where it is?

A. Yes, sir.

Q. You have some property near down there?

A. Yes, sir; immediately at the mouth, belonging to my children.

Q. What do you know as to the condition of Tone's bayou with regard to the water deepening or filling up?

A. The water is shallowing at the mouth of Old river very rapidly and has been for some years.

Q. Is it or not the cutting off the supply of water from Tone's bayou to a considerable extent?

A. Yes, sir; except in extreme high water.

Q. Do you know anything of the size of Bayou Pierre above Tone's bayou?

A. Yes, sir.

Q. What is about its general average size? I mean Bayou Pierre up towards Shreveport.

A. It varies; it is a large stream, though.

Q. What is its general width from where Tone's bayou makes into it up to this dam, as far as you know?

A. I suppose it would be 200 or 300 feet, probably.

Q. What about the general average depth from the top of the bank down to the bottom of the bayou?

A. I have never measured it.

98 Q. Such banks would be filled with water at high-water times?

A. Yes, sir; it is capable of carrying off a good deal of water. I don't know the depth of the banks at the various places.

Q. Can you give some estimate?

A. It would be 23, 24, or 25 feet, I suppose.

Q. In times of high water, before this dam was placed across Bayou Pierre, state whether or not said Bayou Pierre would be filled up to the top of its bank.

A. Yes, sir; overflowing its banks.

Q. What capacity has this Bayou Pierre from the dam down to where Tone's bayou makes into it, so far as water is concerned, to float or navigate a flat-boat, barge, or small steamboat, if the logs or obstructions were taken out of it by the engineers of the United States?

A. It would be just as navigable as the Red river nearly, except not so large a stream, if all obstructions were entirely removed.

Q. Then the difficulty in navigating it all the way up is not on account of water, but on account of logs, rafts, etc.?

A. Yes, sir.

Q. Have you ever crossed at that ferry spoken about?

A. Yes, sir; frequently.

Q. About what is the width of the Bayou Pierre at that place?

A. In high water it is very wide.

Q. What is the width of the banks there?

A. I suppose about 300 or 400 feet.

Q. About what was the depth of Bayou Pierre at the time that you crossed it, or at any time that you were crossing it, when the river here was in good navigation, when it was pretty full, but not any danger of overflowing?

A. In low water a pole was used in crossing a flat-boat; I

99 suppose the pole would be about twenty feet long; the depth varies; in the center it was probably twelve or fifteen feet deep in the channel and shoaled to a few inches on the sides.

Q. Have you ever been on Bayou Pierre below where Tone's bayou makes into it?

A. Only a short distance.

Q. What is the difference in the relative size of Bayou Pierre below where Tone's bayou makes into it and above, up where you crossed the ferry?

A. Well, Tone's bayou makes into Bayou Pierre about a mile below the ferry; from that point down to the Frierson place the capacity of Bayou Pierre is about equal to the capacity of Red river in the small narrow river and above from the ferry.

Q. That is from where Tone's bayou empties into Bayou Pierre?

A. From Tone's bayou up above to where the ferry is on Bayou Pierre.

Q. Is that below Tone's bayou?

A. There are two ferries, one on Tone's bayou and one on Bayou Pierre.

Q. How is the bayou there?

A. I could hardly estimate the capacity of that stream; it is not near so great, as a matter of course.

Q. What do you know about the increase or diminution of the flow of water through Tone's bayou?

A. It is being filled up from the Old river and from the rafts that are in it. I know nothing, because I have not been down there since this dam was placed in Bayou Pierre.

Q. Are you acquainted with the plantation owned by Mrs. Lillian W. Egan?

A. Yes, sir.

Q. Have you ever seen this dam that has been placed across there?

A. I have never seen it.

100 Q. There is a dam placed a short distance below this plantation completely across Bayou Pierre, below the bridge. What would be the natural effect of a dam thrown across the channel of a stream of water discharging out of Red river, such a stream as Bayou Pierre, upon such a place as this one?

A. It would, of course, increase the water in the main river perhaps two or two and a half feet, probably, more or less.

Q. And make the place much more subject, in your opinion, to overflow?

A. Yes, sir; decidedly.

Q. Do you know anything about how the levees come in just a short distance below Mrs. Egan's place, coming back towards the river?

A. Commencing from near the bank on the Eagle point and on the opposite place, at medium water the levees were comparatively narrow at those places.

Q. That, together with the stopping of Bayou Pierre, would make the place much more subject to overflows?

A. Yes, sir.

Cross-examination:

Q. Do you know the levels of Bayou Pierre from here to Tone's bayou and the levels of Red river from here to Tone's bayou?

A. No, sir; there is no *guage* kept except here at Shreveport.

Q. I mean the comparative height above the sea, do you know that?

A. No, sir.

Q. You don't know whether the bottom of Red river is higher or lower than the bottom of Bayou Pierre?

A. Only by observation. The bed of Red river is higher. Red river runs on a ridge apparently. I never made a survey of it.

Q. Do you think that the level of the bed of Bayou Pierre is below the level of the bed of Red river?

101 A. It is at Tone's bayou, where Tone's bayou empties into Bayou Pierre.

Q. I didn't ask you what was the difference between the level of Tone's bayou and Bayou Pierre. I asked you if you thought that the bed of Bayou Pierre was lower than the bed of Red river.

A. At that point I know it is.

Q. That is not my question.

A. That is the only means I have of answering it.

Q. I have not asked you anything about Tone's bayou and Bayou Pierre. Do you know whether or not the level of Red river from Shreveport to Tone's bayou is above or below the level of Bayou Pierre from the mouth of Bayou Pierre to Tone's bayou?

A. I do not.

Q. You have said that the effect of this dam in Bayou Pierre would be to raise the water from two to two and a half feet on this Grigsby Island place?

A. Yes, sir.

Q. Isn't this Grigsby Island place bounded to a very large extent by the present Red river?

A. It is by Old river and Red river.

Q. Then is it not true that the question whether or not the flood level will be raised so as to affect Grigsby's island depends upon other things—upon the carrying capacity of Red river?

A. It depends upon the depth and width and velocity of the water.

Q. Answer my question first. Is it not true that the determinanion of the question whether or not this dam in Bayou Pierre will raise the flood level so as to affect this Grigsby Island plantation, among other things, depends upon the carrying capacity of Red river itself?

A. Most undoubtedly.

Q. If Red river has sufficient capacity to carry the water
102 off that comes there, then the flood level will not be affected?

A. If the stream was large enough and wide enough and deep enough to carry it off, it would not be raised at all.

Q. What, in your opinion, would be the effect of closing outlets?

A. I think all the small outlets should be closed and the larger ones kept open.

Q. What is the effect of it?

A. To increase the water in the main channels.

Q. And to raise the flood level?

A. Yes, sir.

Q. You think that is the effect of closing outlets?

A. Yes, sir.

Q. And on that you base your conclusion that the flood level will be raised so as to injuriously affect this place?

A. Yes, sir.

Q. You base your conclusion on that supposition?

A. Yes, sir.

Q. Have you ever followed the course of Bayou Pierre from Hart's island, where this dam is located, down to Norris' ferry?

A. I have never traversed it.

Q. How, then, do you know what is the width and depth of the channel between those two points?

A. I have visited it at various points.

Q. At what points?

A. Along between here and there, back of Cawthorne's, Hart's island, Norris' ferry, and other points.

Q. You went down there in a skiff?

A. No, sir.

Q. Do you know of its being used for commercial purposes in any way?

A. That portion of it has never been navigated by steamboats, to my knowledge, from the dam down to Norris' ferry.

103 Q. Did you ever know of its being navigated up to Norris' ferry?

A. No, sir.

Q. It has never been used except below Tone's bayou, to your knowledge?

A. Yes, sir.

Q. Isn't it a fact that the bayou between Hart's island and Norris' ferry goes dry every summer?

A. Not to my knowledge.

Q. Isn't it a fact that wagons cross it at various places?

A. It is fordable, I think, but there is always water there, in my opinion.

A. C. HEPBURN, being recalled by the plaintiff, testified as follows:

Q. Do you know anything about the overflowing of the Lillian W. Egan place in 1890—the Grigsby Island place?

A. I know this: I know that the levees remained on the place after the overflow of 1890 away higher than the water. The overflows was caused from caving banks.

Q. You know that part of the levee had been caved in?

A. Yes, sir.

Q. Did you run a new levee on that place?

A. Yes, sir.

Q. What was the comparative heights of those levees and the water of 1890?

A. They were considerably above the 1890 water.

Q. Then the cause of the overflow of 1890 was the caving in of part of the levee?

A. Yes, sir.

Q. What do you know of the comparative heights of the levees there and the water of 1892?

104 A. I have already testified as to that fact—that the waters of 1892 did not come up as high as the levees.

Q. What was the cause of the overflow of 1892?

A. I was not present, but I saw a break where there was a wagon road. I know that the levee was above the high water.

Q. What breaks did you see?

A. There was a break where there was a wagon road.

Q. How wide was that break?

A. I never measured it, but it was about as wide as this room (about 35 feet).

Q. I believe that you stated that the levee was above the high water of 1892?

A. Yes, sir.

Q. Which way does that place slope—what part of that place is highest?

A. The land on the river is the highest, and on the Old river the western front.

Q. Which way does the drainage slope on that place?

A. The drainage slopes towards the stream that runs on the south and east.

Q. Is that Bayou Pierre?

A. I suppose so. The natural drainage of the place proper is toward the south and east.

Q. What effect will the building of this dam have upon that drainage?

A. There is a fall of about $\frac{5}{10}$ between the flood level of the levees on the place and this dam, and this dam would cause the water to seek its level on that portion of it, I suppose.

Q. Cut off the drainage?

A. Yes, sir.

105 G. B. WURTZ, witness for the plaintiff, being duly sworn, testified as follows:

Q. What is your occupation?

A. I am assistant observer of the United States Weather Bureau in Shreveport.

Q. Were you acting in that capacity in December last?

A. Yes, sir.

Q. Part of your duties is to observe the height of the water in Red river?

A. Yes, sir.

Q. I will ask you if a record of the water was taken on December 4th, 1892.

A. It was not taken by me, but it was read by a competent party. A record has been kept of it.

Q. I will ask you to state what the record shows it was on that date.

A. I have a record here I brought over with me, taken from the records here, which shows that on Dec. 4th, 1892, at 7 o'clock a. m., the water was 14.9 feet above zero of the *guage*; at 5 o'clock p. m. on the same day it was 15.3 feet above zero of the *guage*.

Q. What is called high water in the river?

A. Twenty-nine feet is considered the danger line. There are a good many low lands that overflow at twenty-five feet, I am told. That is the danger line, not the high-water mark. The high-water mark of last year was 35.7 feet, I think.

Plaintiff offered in evidence art. 5251 of the Revised Statutes of the United States.

It was agreed that plaintiff would be allowed to introduce the witnesses Randolph and Terrell whenever they might appear.

106 Plaintiff rests.

P. J. TREZEVANT, witness for the defendants, being duly sworn, testified as follows:

Q. In what business have you been engaged for the last several years?

A. Leveeing and road-contracting.

Q. On what rivers?

—. On the Mississippi and its tributaries.

Q. Including the Red river?

A. No, sir; I have not done any work on the Red river in the last eight years.

Q. Are you not engaged in work on Red river right now?

A. At present I am interested in a contract, but I am not doing it myself.

Q. Your business has been that of constructing levees on the Mississippi and its tributaries?

A. Yes, sir.

Q. Have you any knowledge of the dam that has been recently constructed in Bayou Pierre below Shreveport?

A. I know the location of the dam and stream; something about it.

Q. Have you any knowledge of the plantation of Mrs. Lillian W. Egan on Grigsby's island?

A. I know of the place.

Q. Do you know where it lies?

A. I know where it lies and its boundaries and the general description of it.

Q. Have you any knowledge of the Red river at a point where what is now Old river, and is sometimes called Bayou Pierre, leaves Red river?

A. I have a general pretty good knowledge of the streams
107 around in there and their general location and connections.

Q. Were you present yesterday when Mr. Hepburn gave his testimony in this case?

A. Part of the time; yes, sir.

Q. Did you hear his estimate of the depth of Bayou Pierre at different parts which he gave yesterday?

A. No, sir; I was not here at that time.

Q. Did you hear the estimates which he gave of the width of the bayou?

A. No, sir; I didn't hear any of his estimates as to its width.

Q. How could a reasonable conclusion be formed with regard to the damage which will result to the flood level of Red river in consequence of the dam in Bayou Pierre? In other words, have you

any opinion as to the effect which will result from the closing of Bayou Pierre by that dam?

A. Yes, sir; I have my ideas of it. I know the general conformations of the streams. I know where the dam is and I have my idea as to what the result will be on the water in the channel in Red river.

Q. What is the effect of closing outlets on a stream like Red river or the Mississippi?

A. The results are various. I think it increases the carrying capacity of the stream immediately below the outlet. I think that is the accepted theory on the subject.

Q. It is your opinion, then, that the closing of outlets results in forcing the water into the channel, and thereby increases its carrying capacity?

A. Yes, sir.

Q. About what number of miles of levee are there on the Mississippi river?

A. Under the State management in the engineer's office
108 there is something like 1,280 miles. There are new levees constantly being built, and that may be increased some.

Q. What is the highest water of the Mississippi within your knowledge?

A. That of last year.

Q. What extent of the levee system under the control of the State was injured by high water last year?

A. The total breaks in linear feet would be something like 4,200 feet.

Q. With the exception of those breaks the levees stood?

A. Yes, sir.

Q. You say that the water of 1892 was the highest you have ever known. If the levee system of the State had not been there what would have been the effect of the water on the land?

A. Like it did in 1885.

Q. It would all have been overflowed?

A. Yes, sir.

Q. Consequently the levee system of the State has reclaimed and is reclaiming lands along the Mississippi river?

A. I think so.

Q. Taking the Red river as it lies contiguous to this Grigsby Island place and the Bayou Pierre as it was before there was any dam there, is the bed of Red river lower or higher than the bed of Bayou Pierre?

A. Do you mean the bottom of the two streams?

Q. Yes, sir.

A. The Red River bottom is much lower.

Q. Consequently there are stages of water in Red river when no water at all will run out of Red river into Bayou Pierre?

A. The river at Shreveport has a fluctuation of 35 or 36 feet, and it certainly has two to fifteen feet depth at the lowest water,
109 which would make the bottom of the river sixty feet, and Bayou Pierre certainly cannot be that deep.

Q. Consequently the water flows out of Red river into Bayou Pierre only at high water?

A. Yes, sir.

Q. Can you give a reasonable estimate of the extent to which the water might or might not be raised, so as to affect Grigsby's island by the presence of this dam?

A. That calculation could be made if the exact data were given.

Q. Are the data within your knowledge sufficient to enable you to give a reasonable estimate as to it?

A. I have my ideas of it. Assuming that the channel of the river is a certain width, say where the outlet would be below Grigsby's island, right at the dam, Johnson's place, between the levee is, say, 1,500 feet; then that the depth of the river is, say, 50 feet, and the depth of the bayou, I don't think, would exceed 18 or 20 feet, and the width of the bayou, possibly, is 125 feet; not over that. Now, assuming that that is correct, and the discharging capacity of the river being governed, of course, by the volume of the fall, you might arrive at a calculation which would give approximately what Bayou Pierre would carry off, and consequently what the result would be in the event of its being closed. Then you could come to an approximation as to the amount of inches in height the river would be raised by leveeing the bayou in there.

Q. What, in your opinion, will be the effect of the dam in Bayou Pierre on this Grigsby island? Will it raise the flood level or not, and, if it raises it, to what extent?

A. I think it would certainly raise it some, but I don't think it would exceed three or four inches. I put the maximum at four inches, but I don't think it would reach that.

110 Q. Assuming that the effect of the dam, closing the outlet, would be to deepen the channel of the river, then the flood level would not be affected at all, except it would be lowered?

A. Yes, sir; I think in a year or two it would not be as high. I think possibly in the first two or three high waters it would be higher.

Q. The effect, in your opinion, would be to lower the flood level?

A. Yes, sir; given the same quantity of water coming down every year.

Q. Have you any knowledge of Tone's bayou?

A. Yes; some. I have been down there and know the general geography of the country. I don't know it accurately.

Q. Have you ever been in Tone's bayou itself?

A. Yes, sir.

Q. And in the bayous immediately below Tone's bayou?

A. Yes, sir; I went there once in 1876 or 1879 with Major Wilson, when he was on the Government survey.

Q. At that time could Tone's bayou be navigated?

A. No, sir; not that part of it. Tone's bayou is very short and there was a depth sometimes in Tone's bayou which could have been navigated, but the old Government dam effectually stopped all navigation of that kind.

Q. Could there be any navigation through Tone's bayou at that time?

A. I think not.

Q. Taking Bayou Pierre, after Tone's bayou formed a junction with it, was it navigable immediately below its junction?

A. Taking into consideration that they could not get into it, I should say no. Sometimes in Bayou Pierre it was deep enough, but they could not get into it.

Q. In other words, Bayou Pierre could not be navigated by means of Tone's bayou at that time?

A. I don't think so. I think the Government records will
111 show that that was impossible.

Q. What effect has the overflow of 1890 and 1892 had on the market value of Red River plantations generally?

A. It has been disastrous.

Q. Impaired it very much?

A. Yes, sir.

Q. I will ask you whether or not the two levee districts of Caddo and Bossier are not engaged in the construction of levees on both sides of the river.

A. Yes, sir.

Q. Extensive levees on both sides?

A. Yes, sir.

Q. Are those levees built immediately upon the banks of the river?

A. No, sir; as a general thing they have been set very much further back than they used to be. Many of the old levees were immediately on the banks of the river and very many of these new levees are several hundred feet away from the river. The levees below are very much further back than they used to be.

Q. Immediately below Grigsby's island have the levees been set back on both sides of the river?

A. I should say that the levees were back there considerably from what they were before.

Q. Don't the setting back of these levees necessarily add to the channel capacity of Red river in times of overflow?

A. I think that is an evident fact.

Q. Do you know Mack's bayou?

A. Yes, sir.

Q. Is that bayou now open?

A. No, sir; it is closed by a levee.

Q. I will ask you whether or not it is a fact that the levee boards and the board of State engineers are generally closing outlets
112 from Red river in the construction of levees.

A. They are generally doing it all over the State, so far as my observation is concerned.

Q. Are they generally doing it in this section of the country?

A. Yes, sir.

Q. Do you know whether Sale & Murphy's canal was closed?

A. It was closed once by the United States Government.

Q. This dyke in Bayou Pierre joins the hills on the west bank of Bayou Pierre?

A. Yes, sir.

Q. Is there any reason why it should do it?

A. None, except the natural place to start it would be on the high grounds above overflow.

Q. Does the fact that it joins the hills on the west bank have any bearing on the general levee system of the State in regard to Red river?

A. Yes, sir; I think that the engineers considered that the levee system begins at the hills immediately below Shreveport; that is one of the initial points; that makes what is known as an initial point.

Q. Assuming that the levees are to be built and the lands attempted to be reclaimed and the navigation attempted to be improved, in your opinion, can or not that be done by having levees at intervals up and down, or must it be done by a continuous work having its initial point on the hills?

A. It must be a continuous work and of such height that the water cannot go behind it.

Q. In other words, where they can find a place on the hills they take it?

A. Yes, sir.

Q. What is the size of Red river as it flows past this
113 Grigsby island? Is it a large or a small stream?

A. It is a pretty good sized stream; I should suppose that the river there must be 800 feet wide, and the levees are setting back considerably from the river, say 500 feet on each side.

Q. What is the probable depth there?

A. I approximate the depth by the depth at other places, and I should suppose that the channel of the river from the bank to the bottom must be something like 40 to 50 feet, because the high-water mark at Shreveport, which is very little above that point, say 5 miles above there by river, the variation is only about 35 feet; now, the fall from the hills immediately below town, from Silver lake to the mouth of Tone's bayou, which I happen to know by actual survey, is 12.8 feet, which would give close on to that; now, therefore, I would consider that the river down there is somewhat shallower than at Shreveport because of the outlets on either side, but not materially.

Q. It is a broad and deep stream and there is a considerable fall?

A. Yes, sir.

Q. What is the general inclination or slope of alluvial lands from the banks inward or outward?

A. The land slopes back from the river front.

Q. Isn't that the case where the lands front on bayous?

A. That is so on all alluvial streams. On all alluvial streams the land which is adjacent to them slope- from the bank back; that is my observation.

Q. Can or cannot the levee system as it is contemplated to be

constructed by the State be carried out without damming Bayou Pierre?

A. I think not.

Objected to by the plaintiff; which objection was by the court overruled; to which ruling plaintiff excepted.

114 Cross-examination:

Q. Are not what you have said in regard to the effect upon Grigsby's island by the building of this dam and the effect upon the channel of Red river by the building of this dam simply a developement of the Eads theory of building levees?

A. Yes, sir.

Q. Do you not know, as a matter of fact, that there are a great number of intelligent men who content just as strenuously in saying that the effect upon the channel of the rivers will not be as claimed by Mr. Eads?

A. I know that there are a great many men that claim that, but they are not intelligent men; they are men who advance their theories and possibly give good argument for it.

Q. You have answered that you thought the effect of damming Bayou Pierre and all other outlets would be to deepen the channel of the river?

A. Yes, sir.

Q. Wouldn't that depend at different points largely on the character of the bed?

A. Wherever water flows there is a certain amount of errosion.

Q. And that depends on the character of the bed?

A. Yes, sir.

E. M. SMITH, witness for the defendants, being duly sworn, testified as follows:

Q. You have lived in this country, Shreveport and vicinity, for a number of years?

A. Yes, sir.

Q. Do you own any lands lying on or near Bayou Pierre?

A. Yes, sir.

Q. You own some on the swamp and some on the hills
115 adjacent to Bayou Pierre and Red river?

A. Yes, sir.

Q. Where do your lands lie?

A. They lie at what I consider the mouth of Bayou Pierre and below there on both sides.

Q. How do they lie with reference to this dam?

A. It comes up the bayou about a quarter of a mile and then runs down the bayou about a mile.

Q. And you have other lands still further below that?

A. Yes, sir.

Q. Are you familiar with what is known as Bayou Pierre?

A. Yes, sir.

Q. How long have you observed that stream?

A. I purchased land down there, I believe, in 1868.

Q. Have you been observing it ever since?

A. Yes, sir.

Q. Is the bed of Bayou Pierre higher or lower than the bed of Red river?

A. It is higher all through that section of the country.

Q. Then water flows out of Red river into Bayou Pierre only when Red river is high?

A. Yes, sir.

Q. Is Bayou Pierre from the mouth, or from Hart's island down to Tone's bayou, a constant stream, or does it sometimes run dry?

A. No, sir; it is not a constant stream; it takes about 17 feet of water on the *guage* here to run past my place.

Q. That is seventeen feet above low water?

A. Yes, sir.

Q. Your place is at the dam?

A. Yes, sir.

Q. Before water will run out of Red river into Bayou
116 Pierre it must be seventeen feet above low water?

A. Yes, sir. I have noted that in getting my stock out of the swamp. We know that when it passes 17 feet we cannot pass it in safety to get the stock out, consequently I made notes of those facts.

Q. What do you call Bayou Pierre?

A. It starts from Old river at the toll-bridge is what I have always been told by old settlers.

Q. You say, then, that it takes high water in Red river before any water flows out of it into Bayou Pierre?

A. Yes, sir; that is tr*ye*—by my place. I will say that the water that comes through Tone's bayou will back up to my place nearly before it runs through. It will back through there, and I have my doubts whether the levee is going to benefit lands away lower down or not.

Q. I am asking you whether this stream is continuous or not.

A. I will say this: I have hunted all through that country, and, while Bayou Pierre has holes of water all along it, there are places all along it where we can ride across.

Q. In other words, there is water in Bayou Pierre so far as it comes out of Red river only when Red river is at a stage of high water?

A. Yes, sir.

Q. At other times the bayou is in places dry and generally fordable?

A. Yes, sir; fordable. Stock-hunters go all over it everywhere Understand me, now, after it backs through Tone's bayou and backs almost up to my bayou place, it destroys all them fords before it passes my place.

Q. But it won't pass your place until it gets up on the *guage* here to 17 feet?

A. No, sir.

117 Q. That is, a high stage of water?
A. Yes, sir.
Q. What do you call low water?
A. The Government *guage* has established that fact. I believe they claim that low water is as low as the water ever gets in Red river.
Q. Do you know what that is in Shreveport?
A. No, sir.
Q. You don't know what the low-water *guage* is at Shreveport?
A. No, sir. I presume it is as low as the water ever gets.
Q. Is it not a fact that you have frequently forded Bayou Pierre?
A. Yes, sir.
Q. What use is made of Bayou Pierre; are there any crossings to and fro?
A. There are roads crossing it almost every half a mile up and down it.
Q. I am talking about crossing it. You don't use ferries or boats?
A. No, sir; when we have no water.
Q. You have crossings every half mile or so from the mouth down to Tone's bayou?
A. Yes, sir.
Q. There was a general overflow in 1890 and 1892 in Red river?
A. Yes, sir.
Q. What effect did it have on the Red River lands?
A. It reduced the value of it very much, generally. I don't suppose there was any land but what was affected by it.
Q. It had a very destructive *affect* upon the values of Red River lands?
A. Yes, sir.
Q. You know this Grigsby Island place?
A. Yes, sir.
118 Q. You know it very well?
A. Yes, sir.
Q. How long have you known it?
A. I have known it since 1870; watched it with a view of buying it some time.
Q. About what was that worth in 1888 or 1889, prior to the overflow—1890?
A. I cannot say just what it was worth then, but I was offered the place repeatedly, with all the mules and fixtures on it, in 1880 or 1881 for $10,000.
Q. Did Red River property increase generally in value from 1881 to 1889 to any considerably extent?
A. In some places it did, but in that place it did not.
Q. To what extent did it increase in favorable places?
A. I suppose it increased about 20 or 25 per cent.
Q. So there might have been an increase in the value of that place from $10,000 to $12,000?
A. In my judgment, I never did think much of that place. It was always a basin.

Q. What effect did the overflows of 1890 and 1892 have on that place in regard to its value?

A. It, of course, diminished it, but it was always a basin and never looked upon as a valuable place.

Q. The place is naturally a basin?

A. Yes, sir.

Q. Have you ever known of Bayou Pierre from its mouth down being navigated or used for any commercial purposes?

A. No, sir.

Q. Can it be so used?

A. I don't think it could.

Q. Are you a real-estate agent?

119 A. Yes, sir.

Q. How long have you been so engaged?

A. Twenty years.

Q. In this city?

A. Yes, sir.

Q. Is there a public bridge across Bayou Pierre, a short distance above the dam in question?

A. Yes, sir; right at the mouth of Bayou Pierre.

Q. How long has it been there?

A. About fifteen years, I think.

Cross-examination:

Q. You say Bayou Pierre is frequently fordable. Did you ever know Red river to be fordable?

A. No, sir.

Q. You never knew wagons to drive across it?

A. No, sir; not here at Shreveport.

By the COURT:

Q. The lands that the plaintiff owns compose an island. Is that island surrounded on all sides by water?

A. Yes, sir.

Q. That water all comes from Red river?

A. Yes, sir.

Q. To protect that plantation is it necessary to have a levee all around it?

A. Yes, sir.

Q. Is there a levee there now?

A. There is a levee all around, except the extreme lower end. It was left distinctly in there by itself. It has been virtually without a levee there, except keeping the water within that basin, which would seep or rain in there. That would cover nearly one-fourth of the place.

120 Q. This was an island when the present plaintiff acquired it?

A. It has been an island ever since I knew it, and was owned then by Mr. White and from him to his daughter.

Cross-examination:

Q. As I understood you, it takes water on the gauge, 17 feet at Shreveport, to run past your place?

A. Not to run into it. It doesn't take 17 feet for the water to come into Bayou Pierre; it takes 17 feet before it passes my place.

Q. You cannot ride across Bayou Pierre when the water is high at Shreveport?

A. After it gets above that we cannot get across it.

Q. Have you subscribed or promised to pay anything to Hart to build this dam?

A. Yes, sir.

Q. How much?

A. $250.

Redirect examination:

Q. This Grigsby island is bounded to a very considerable extent of the island by the main channel of Red river itself?

A. Yes, sir.

Q. Can't the island, then, be drained into Red river, so far as there can be any drainage to it?

A. The drainage proper is what we call Old river. It is a little higher on Red river.

Q. How can that be if most of it lies on Red river?

A. It is all the cultivatable part.

Q. How much of it is not cultivated?

A. It is pretty nearly all cleared up and cultivated since they cleaned up that basin.

Q. The greater portion of the land fronts on Red river, doesn't it?

121 A. I don't know that there is much difference. I think the bayou side is much the longest.

Q. A large portion of this island is bounded by the main channel of Red river itself?

A. Yes, sir.

WALTER CROWDER, witness for the defendant, being duly sworn, testified as follows:

Q. You reside on Red river?

A. I have a place below on Red river.

Q. How far from here?

A. About eight miles.

Q. Just below Shreveport?

A. Yes, sir.

Q. You have knowledge of Mrs. Egan's plantation, Grigsby's island?

A. Yes, sir.

Q. You have a knowledge of the dam which has been recently constructed across Bayou Pierre?

A. Yes, sir.

Q. And a general knowledge of the country and streams on Red river, including Bayou Pierre?

A. Yes, sir.

Q. Down to Tone's bayou and past?

A. Yes, sir.

Q. How long have you known Bayou Pierre?

A. Since 1866.

Q. You have a knowledge of it from where it comes out of the main channel of Red river to and below Tone's bayou?

A. Yes, sir; since 1861 or 1862.

Q. Since 1861 or 1862 what has been the condition of that part of Bayou Pierre in regard to navigation? Could it or not
122 be navigated from its mouth to Tone's bayou?

A. At no time could it be navigated since I have known it.

Q. Is the bed of Bayou Pierre higher or lower than the bed of Red river?

A. Very much higher.

Q. The water, then, can flow out of Red river into Bayou Pierre only when it has arrived at a high stage of water in Red river?

A. Yes, sir; only at a high stage of water in Red river.

Q. Do you have occasion to cross Bayou Pierre in going to and from your place to Shreveport?

A. Yes, sir.

Q. How do you cross it?

A. On the bridge.

Q. Did you ever have occasion to cross it at other points?

A. I have forded it frequently.

Q. Have you ever known wagons to cross it?

A. My wagons cross it frequently. There is a neighborhood roadway from the river bottom to the hills, and the charter-owner of Bayou Pierre bridge is deprived of a great part of his tolls by wagons fording Bayou Pierre and going up that way.

Q. Is the flow of water continuous all the time or is portions of the bed sometimes dry?

A. Entirely dry at times.

Q. You were here at the overflows of 1890 and 1892?

A. Yes, sir.

Q. What effect did these overflows have on the value of Red River lands?

A. It had a very depressing effect on the value of Red River lands.

Q. Are you familiar with this Grigsby Island place?

A. Yes, sir; I have known it intimately since 1874.

Q. It is entirely surrounded by water?

123 A. Yes, sir; by flowing water.

Q. Alluvial lands on Red river are inclined from the bank outwards, are they not?

A. Yes, sir.

Q. The interior portion of this place is a basin?

A. Yes, sir.

Q. And always has been?

A. Yes, sir; ever since I have known it.
Q. And must necessarily be so?
A. Yes, sir; high around the edges and low in the middle.
Q. What effect do you think this dam in Bayou Pierre will have on the carrying capacity of the main channel of Red river? Will it increase it or decrease it?
A. I think it will increase the carrying capacity of Red river.
Q. Is that fact beneficial or injurious to Red River lands?
A. It is beneficial to Red River lands.
Q. You think, then, that the effect of this dam across Bayou Pierre will be beneficial to Red River lands?
A. I do.

WILLIAM CROWDER, witness for the defendants, being duly sworn, testified as follows:

Q. How long have you lived in this parish?
A. Since 1855, in January.
Q. How long have you had a knowledge of the Red river and its tributaries and bayous, particularly Bayou Pierre and Tone's bayou?
A. 1874, I believe, was my first acquaintance much with Red river.
Q. Was Tone's bayou navigable in 1877—that is to say, could there be navigation through Tone's bayou up into Bayou Pierre from 1874?
A. No, sir; I never knew of anything of that sort.
124 Q. Bayou Pierre could not be navigated in that way?
A. No, sir.
Q. Is the bed of Bayou Pierre just below town here higher or lower than the bed of Red river?
A. I don't know. I always regarded it as being higher, because just as soon as the water gets a little low in the river it runs out of the bayou into Red river.
Q. At a certain stage of the water, water flows out of Bayou Pierre into Red river?
A. Yes, sir.
Q. Is the flow of water in Bayou Pierre from its mouth to Tone's bayou continuous, or does it sometimes go dry in places?
A. It goes perfectly dry at some seasons of the year. I have hunted from one end to the other of it and have walked across it in a hundred places.
Q. Has it ever to your knowledge been used for commercial purposes?
A. No, sir.
Q. Can it be used that way?
A. No, sir.

Cross-examination:

Q. You say it cannot be navigated at all?
A. Not by a boat; you might navigate it about forty or fifty

yards and you would run up against trees or the ground, or something of that kind.

Q. Do you pretend to say that there is not water enough to run a boat?

A. No, sir; I have seen it so that you could run the biggest boat in the world all over a whole plantation.

Q. Do you mean to say that there is not a channel there at high water that a boat could be run in?

A. If the trees and logs were taken out I suppose it could.

125 Q. If the trees and logs were removed there would be enough water to run a boat?

A. Yes, sir; there might be.

Q. And the reason that it cannot be navigated at certain seasons is because of the trees and logs in it?

A. It is because there is no continuous channel.

Q. Do you know when there was a levee built across Tone's bayou by the United States authorities?

A. Yes, sir.

Q. When was it?

A. I think it was about 1879.

Q. Is any portion of the United States levee there yet?

A. There is a little of the ends of the abutments on one side, and then on the Scopini island you can see a little through the woods there.

Q. Then, if I understand you, Tone's bayou has got no continuous channel?

A. No, sir; not Tone's bayou. You said Bayou Pierre.

Q. What do you say about navigating Bayou Pierre?

A. You can navigate it about 500 or 600 yards—from Tone's bayou to the ferry.

Q. What is the reason of that?

A. There is plenty of water there, but you can go down and strike a raft.

Q. It is because the raft is there that it cannot be navigated? When Red river is high, couldn't it be navigated?

A. No, sir.

Q. What is the reason?

A. Because there is thousands and millions of trees in there.

Q. If the trees and rafts were out couldn't it be navigated; isn't there water enough to navigate it?

126 A. Yes, sir; I have seen it so.

Q. When Red river is high, don't plenty of water go down Tone's bayou to make it navigable?

A. No, sir.

Q. Do those trees and rafts prevent the water going down there?

A. Yes, sir; sometimes it comes right back and does not go down.

Q. You say that the rafts and trees have obstructed Tone's bayou so that the water does not go down there?

A. Sometimes it flows down there; when we have very high water and the levees all break over on our side and do not break on Bos-

sier it sometimes goes down Tone's bayou; it makes a shoot right back up Tone's bayou.

Q. Why does it do that?

A. Because the water level is lower.

Q. How high does the water have to be to run from Red river into Tone's bayou?

A. Dead low water. The water seems to be standing the same height in Tone's bayou and Red river generally.

Redirect examination:

Q. What do you mean by speaking of trees in Bayou Pierre? Do you mean growing trees?

A. Well, the channel, or what any one might call the channel, in it you can go maybe 40 or 50 feet and then there would be an embankment and a tree growing right in the middle of it. Almost every high water will start some other channel; there is no continuous channel down it.

By the COURT:

Q. From the point where Tone's bayou empties into Bayou Pierre, from that point coming this way to where Bayou Pierre comes out of Red river, has that stream ever been navigated?

A. Not to my knowledge.

127 Redirect examination:

Q. You have been on Red river for fifteen or sixteen years, haven't you?

A. Yes, sir.

ARCHIE HART, defendant, being duly sworn, testified as follows:

Q. Where do you reside?

A. Hart's island.

Q. How long have you resided on Hart's island?

A. About twenty-nine years.

Q. Were you born there?

A. Yes, sir.

Q. You are one of the defendants in this suit?

A. Yes, sir.

Q. Are you the State contractor who constructed this dam in question?

A. Yes, sir.

Q. What amount did you receive from the State for the construction of this dam?

Objected to.

Defendants filed in evidence the depositions of Walter H. Hoffman, Henry B. Richardson, and F. M. Kern, with documents and exhibits thereto annexed, and the same are marked "H."

Q. Have you read those contracts annexed to those depositions?

A. Not those particular ones. I read the original contract I have. I don't know whether they are copies or originals.

Q. You don't know anything about these particular papers?

A. Yes, sir.

Q. This work was done under a written contract with the State of Louisiana?

128 A. Yes, sir.

Q. Have you received your contract price from the State yet?

A. No, sir; I just finished it two or three days ago.

Q. It has not been as yet received?

A. No, sir.

Q. You were enjoined by plaintiff from proceeding with the construction of this work?

A. Yes, sir.

Q. State what preparations you had made for the construction of the work at the time the writ of injunction was served on you.

A. I had employed about forty teams, including drag and wheel scrapers, and about eighty laborers, and was engaged in constructing the dam. I was actually engaged in it when I was stopped.

Q. How long was your work suspended on account of this injunction?

A. It was about eight days.

Q. During that time were your teams idle?

A. Yes, sir.

Q. What were they worth to you a day or what was the usual and customary prices at which teams were hired for the construction of such work?

A. They were worth about $3.50 a day.

Q. What does a team consist of?

A. A pair of mules and a scraper and a driver.

Q. What were the use of such teams worth without the driver per day?

A. Well, I paid the driver 75 cents per day. Deduct that from $3.50 and it shows the worth of the team.

Q. How many teams did you have?

A. I had about forty.

Q. How long were they idle?

A. The injunction was served on me Wednesday, I think, and it was Thursday of the next week before I could start up again.

129 Q. You were superintending the job yourself?

A. Yes, sir.

Q. What was your personal time and work worth during that time?

A. It was worth a great deal to me at that time. I suppose an experienced contractor's services would be worth about $4 or $5 a day, and mine was worth more.

Q. Why?

A. Because I had so much business to attend to and so many things to look after in this matter.

Q. Did you employ counsel to defend this suit brought against you?

A. Yes, sir.

Q. I will ask you whether in the construction of this levee from Bayou Pierre to Dixie levee you received any aid or assistance from the United States engineers.

A. Yes, sir.

Q. State what assistance you received.

Objected to on the grounds:

First. That there is better evidence in the shape of an act of Congress or a river and harbor appropriation.

Second. That it is contrary to the allegations in defendants' answer, in that they allege that it was a private contract with the State.

Counsel for the defendants stated that the evidence sought to be brought out was not for the purpose of showing a contract under the United States Government at all, but simply for the purpose of showing that a United States official lent his assistance to the work in the way of advice and suggestion.

The evidence was admitted by the court for the purpose stated; to which ruling the plaintiff excepts.

Plaintiff objected to any further questions upon the same line, upon which the court made the same ruling; to which ruling
130 the plaintiff excepts.

Q. Do you know J. H. Willard?

A. Yes, sir.

Q. Has he any title?

A. Yes, sir.

Q. What is it?

A. Captain of the United States engineers.

Q. Where is he at present?

A. Vicksburg.

Q. Do you know what his duties are; where they extend?

A. All I know particularly about is the construction of levees for the U. S. Government.

Q. Is Captain Willard the officer who has charge of the distribution of funds of the U. S. Government for levees? Is he the officer who has in charge the Government work in Red river?

A. Yes, sir.

Q. What, if anything, did Capt. Willard know about the embankment on Bayou Pierre?

Objected to as hearsay. Sustained.

Q. What action did Capt. Willard take in reference to the dam in Bayou Pierre?

A. He employed me to construct about 30,000 cubic yards of levee and paid me by the day.

Q. About how much did it aggregate?

A. It aggregated $4,000.

Q. Did he enter into a contract with you?
A. Yes, sir.
Q. Look at this paper; do you recognize the signatures?
A. Yes, sir.

Defendants filed in evidence a contract between Captain J. H. Willard, of the corps of engineers, and A. Hart, dated Jan.
131 20th, 1893.

Objected to on the ground that it is contradictory to the pleadings, inasmuch as the constitution of the State declares that wherever the United States shall take charge of a work it deprives the State of any authority over it.
Overruled; to which ruling the plaintiffs except.

Q. Before contracting to construct this work, which you did contract to construct, did you estimate what it would probably cost?
A. Yes, sir.
Q. Did you inform yourself of what amount of the State fund would be available for the purpose of constructing the work?
A. Yes, sir.
Q. How much was that?
A. $4,000.
Q. Did your estimates exceed that or were they less than that?
A. It exceeded that amount.
Q. You contracted for the work, then, with a knowledge of the fact that the State would only pay $4,000?
A. Yes, sir.
Q. And that the work would cost much more?
A. Yes, sir.
Q. Did you expect to lose the difference?
A. Yes, sir; I thought I could do it with other aid.
Q. What other aid did you expect?
A. I expected Government aid and aid from private subscriptions.
Q. Other than yourself?
A. Yes, sir.
Q. What did that amount to?
A. It amounted to about $2,000.
Q. You got from E. M. Smith one of the subscriptions?
132 A. Yes, sir.
Q. Who were the others?
A. J. B. Slattery, Mrs. Robards, A. H. Leonard, T. C. Barrett, T. C. Johnson, and R. K. Colquitt.
Q. And N. C. Blanchard?
A. No, sir.
Q. And you got how much from Capt. Willard?
A. $4,000.
Q. You have stated that you have been familiar with Bayou Pierre all your life. Is the bed of Bayou Pierre where it makes out from Red river higher or lower than the bed of the main channel of the Red river?

A. It is higher.

Q. Is there a continuous flow of water in Bayou Pierre from its mouth to Tone's bayou or is the flow of water interrupted?

A. It is interrupted very much. There is no continuous flow, only when the water is very high, to give any current. Before there is any current in Bayou Pierre at the bridge the water has to be twenty-eight feet, pretty near the danger line at Shreveport, before there is much velocity of the water down Bayou Pierre down at Hart's island.

Q. Hart's island, your place, that is very near the mouth of the bayou?

A. Yes, sir. I have always understood that Bayou Pierre starts at the intersection with the river right at Hart's island.

Q. That is Bayou Pierre proper?

A. Yes, sir.

Q. And where the stream continues up to the present mouth is Old river?

A. Yes, sir.

Q. Do you know whether or not that bayou from its mouth
133 to Tone's bayou can be crossed frequently for use by wagons and persons desiring to go to and from the swamps and hills?

A. Yes, sir; there are frequent crossings; in some places it is very narrow; not over twenty-five feet wide.

Q. Did you ever know of that portion of the bayou being navigable or used for any commercial purposes?

A. No, sir.

Q. Can it be used for that purpose?

A. No, sir; it is impossible; you might run a small skiff in there, but it would be difficult.

Q. What is the effect, in your opinion, of closing the outlets to such a stream as Red river? Is it beneficial or injurious?

A. It is decidedly beneficial; it is the only way to relieve the lands from high water.

Q. How does that operate?

A. By confining the water to the channel it undoubtedly increases the bottom of the stream and deepens it.

Q. In your opinion the closing of the outlets will lower the flood level by increasing the depth?

A. Yes, sir.

Q. Would it have a similar effect upon Bayou Pierre?

A. Yes, sir; undoubtedly.

Q. How long has this dam been constructed?

A. I commenced operations in September of last year. I finished about three weeks ago.

Q. The water has not been high since that time?

A. No, sir; I think the highest was about 24 or 25 feet at Shreveport.

Q. Have you had any opportunity of observing the effect of the dam on the flood level to date?

A. Yes, sir; I noticed that the water ran much faster, in-
134 creasing the current, and that there was a smaller current in

Old river coming around. It came around again and went into Red river. I noticed the current in the river below this point was very much increased.

Q. You think the effect of this dam has already been to increase the velocity of the water in the main channel of Red river?

A. Yes, sir.

Q. And consequently deepened the channel?

A. Yes, sir.

Q. Do you know this Grigsby Island place?

A. Yes, sir.

Q. It is an island?

A. Yes, sir.

Q. It is bounded, by a considerable extent of it, by what is now the main channel of Red river?

A. Yes, sir.

Q. Is that island a plain, or what is its superficial character?

A. It is in the shape, I might say, — a pool.

Q. Has it been that way always since you have known it?

A. Yes, sir.

Q. Before and after the dam was put there?

A. Yes, sir.

Q. That is the natural conformation or lay of the island?

A. Yes, sir; it is a basin. I suppose there has been a lake in the center of it. It is very low.

Q. What was the effect of the overflows of 1890 and 1892 on Red River lands generally?

A. Very depressing. It decreased the value of the property 33⅓ per cent.

Q. About what was this Grigsby Island place worth before the overflow of 1890—say in 1888 or 1889?

A. It was worth $10,000 or $12,000.

Q. After the overflow of 1892 you think it was worth $6,000 or $7,000?

135 A. Yes, sir.

Q. What, in your opinion, has been the effect of this dam on this Grigsby Island place; has it injured it or benefitted it?

A. I don't think it has injured or benefitted it either; I don't think it affected it.

Q. You don't think it is affected by the dam at all?

A. No, sir.

Q. Is it not a fact that at certain stages the water flows out of Bayou Pierre at its mouth from Hart's island into the main Red river?

A. No, sir; it runs a little into Old river when the water is very low.

Q. Is the Old River bed higher or lower than Red river?

A. It is higher.

Q. At certain stages of the water it flows out of Old river into Red river?

A. Yes, sir.

Q. And is it not a fact that at certain stages of the water it flows back into Old river?

A. Yes, sir.

Cross-examination:

Q. I will ask you to look at this map; have you already seen it?

A. No, sir.

Q. At a high stage of water in Red river the tendency of the water is through from this point marked "A," down to the bridge?

A. Yes, sir.

Q. I will ask you if it was not at the noon hour when you were served with the injunction in this case.

A. I had just started to work.

Q. It was at the noon hour and your horses and men were taking their rest?

136 A. I had just started out to work when it was served.

Q. Couldn't you have proceeded with your other levee, as this injunction did not affect anything but the dam?

A. No, sir; I didn't think it was business policy to do so. I wanted to close the bayou first.

Q. You say you had forty teams. Was that besides your own?

A. No, sir; forty teams including my own.

Q. How much had you contracted to pay for those teams?

A. I had them at different prices.

Q. How many had you employed outside of your own?

A. I suppose half.

Q. You had twenty employed?

A. I am not specific about the number.

Q. You don't know exactly how many you had employed?

A. I can tell exactly by looking at my pay-rolls.

Q. You cannot tell without them?

A. I remember it was in the neighborhood of forty; I think 37 or 38 altogether.

Q. What sums had you contracted to pay for those teams?

A. Some I hired for $3.25 a day and some for $3, and I fed them in addition. I think they averaged from $3 to $3.50 a day.

Q. You don't know how many you had for $3 and how many for $3.25 a day?

A. I couldn't tell you exactly.

Q. What was it about, as near as you can recollect?

A. I think I had about nine that I was feeding that I was paying for the teams $1.75 outside of the feed and the driver. The balance I hired from different parties, and could not give you an estimate on them.

Q. During those eight days you were idle did you use those teams for any other purpose?

137 A. No, sir.

Q. Did you pay for them according to the regular rates?

A. Some I did.

Q. And some you did not?

A. Yes, sir; but I fed them.

Q. How many of them did you pay for and how much?

A. I would have to refer you to my pay-rolls. I couldn't tell exactly. There would not be more than several teams I did not pay for.

—. During those eight days were you doing any other work?

A. No, sir; no other work.

Q. You were idle with the teams?

A. Yes, sir.

Q. Was it necessary for you to lay idle with the teams?

A. I thought so. I had nothing to do.

Q. And you also throught it was business policy not to go on with the other part of the levee?

A. I was to complete this levee, and of course if I was stopped from part of it I could not finish the other.

Redirect examination:

Q. How many teams of your own did you have engaged on this work—the least number?

A. Between 15 and 20; I think about 18 of my own.

Q. How many teams did you have hired from other persons?

A. About 22; not less than 20.

Q. You had 35 teams engaged there in that work at the time this injunction was served on you?

A. I had more than 35; I had 37 or 38.

Q. Were you not during this eight days in Shreveport a good part of your time consulting attorneys about this suit and trying to have it dissolved on bond and looking up sureties on the bond?

138 A. Yes, sir.

Q. You were enjoined from building a dam across Bayou Pierre?

A. Yes, sir.

Q. What is the reason that you did not go on with the work at another place?

A. Because I had to build a continuous line of levee.

Q. Did you know whether or not this injunction could be dissolved on bond?

A. No, sir; I did not.

Defendants filed in evidence the depositions of S. J. Frierson, and the same are marked "J."

W. H. Wise, witness for the defendants, being duly sworn, testified as follows:

Q. You are a member of the Shreveport bar?

A. Yes, sir.

Q. And also a member of the law firm of Wise & Herndon, of this city?

A. Yes, sir.

Q. This is a suit brought by the plaintiffs against the defendants

Hart, Richardson, and Kerr, enjoining the construction of a dam across Bayou Pierre. Plaintiff alleges that she is the owner of a valuable plantation, worth about $30,000, in the immediate vicinity of this dam; that the construction of the dam will deprive that plantation of drainage and subject it to overflow so as to render it comparatively worthless, and that the construction of the work in question has already damaged her in the sum of $6,000. The grounds of injunction are—first, that the defendants had combined to construct this dam for their own selfish, private interests and to preserve their own lands from overflow, and that if it was authorized by the board of State engineers that the board had no
139 legal authority to authorize the construction of said dam, and that sec. 18 of the act of 1892 created the Caddo levee board, and which confers on the board of engineers power to open and close the outlets of Red river, is unconstitutional, and on the further ground that Bayou Pierre is a navigable stream, and therefore it is contrary to the acts of Congress to close the same. Defendants claim that the works enjoined are being constructed under a contract with the State of Louisiana, legal and binding in all respects; also that the board of engineers located the works, recommended the same, and had full power to do so under the constitution and laws of the State of Louisiana, and had full power under the laws of the State to close any and all outlets flowing out of Red river for the purpose of preventing overflows. The defendants claim $1,000 special damages as attorneys' fees and $1,500 special damages caused by loss of time, labor, use of teams, etc., during the pendency of the injunction, which was dissolved on bond about eight days after it was sued out. Now, considering the nature of this case, the points involved, the labor required of counsel in trying the same, what would you consider reasonable attorneys' fees for defending as counsel and for services in dissolving the injunction?

A. The case certainly involves very important questions and far-reaching results. I think that, under the circumstances in this case as you have stated them, $1,000 would be a reasonable fee.

Cross-examination:

Q. Isn't it your custom, or at least the custom of lawyers as far as you know it, to base their fees when they are asked to take a case or bring a suit—to base it on the amount involved; isn't that one of the leading factors?

140 A. That, of course, is always taken into consideration, but the amount of money asked for sometimes is the least of the interests that are at stake or at issue in the matter, and I would say that in this case there are very important legal questions, as stated to me. I think there is something more than the mere amount of damage asked for. In other words, the maintenance of the dissolution of the injunction seems to be the main question.

Q. If plaintiff in her suit had not asked for a judgment for any damages against these defendants, but simply asked that the building of this dam be enjoined and showing the effect upon her inter-

ests involved in it and the effect of building the dam would be $20,000 or $25,000, but still did not ask for money damage against defendants, would not $1,000 fee for plaintiff's attorneys be reasonable?

A. I think it would.

Q. The defendants' interest in building this dam might be purely wanton. They might be building the dam for a purpose that they would willingly forego for a few hundred dollars. Then their interest in being allowed to put the dam there—the amount of their interest—would not that regulate the amount of the fee that a lawyer would charge them to attempt to keep the dam there?

A. Well, I don't think so. I think that the matter with me would be determined in this way: If the defendant succeeds in maintaining before a court of justice his right to prosecute this work, then he has been wronged in the attempt of the plaintiff to stop it, and then I believe that the questions at issue—the important legal questions—are to be considered as well as the actual pecuniary interests that the parties may have in the litigation.

141 Q. Hasn't it been your experience, as a practicing attorney, that you have frequently been called upon to give more research to and more legal knowledge and ability in handling a suit involving a few hundred dollars than in others involving several thousand dollars?

A. Yes, sir. Every practitioner realizes that fact when he goes into a justice of the peace court and gives an immense amount of labor for a very small fee.

Q. Your fee has to be governed largely by the amount involved?

A. Yes, sir.

Q. As a general thing isn't that a leading and important feature in taking a case?

A. Generally so when it is mere questions of the amount involved. In injunction matters we are not always controlled by the amounts involved.

T. ALEXANDER, Esq., witness for the defendants, being duly sworn, testified as follows:

Q. You are a member of the Shreveport bar and of the law firm of Alexander & Blanchard?

A. Yes, sir.

Q. Have you a general idea of the litigation now pending before the court?

A. I have some idea of it and I have heard the statement just made to Mr. Wise as to the points involved in it.

Q. You heard the questions put to Mr. Wise this morning?

A. Yes, sir.

Q. What would you consider a reasonable fee for defendants' counsel for services performed and to be performed in the dissolution of the injunction in this case?

A. I should say $1,000 would be a reasonable fee in this case.

Cross-examination:

142 Q. I will state, however, something that I did not state to Mr. Wise, that in defendants' answer as to why he wished to be allowed to continue building this dam the only reason he alleges is that he has got a contract with the State to build this dam, and that he has been damaged by attorneys' fees some thousand dollars and in the interruption of the work $1,500. He states that his interest is the contract with the said $4,000. I will ask you if you think $1,000 would be a reasonable fee for defending his interests.

A. I think so. All the matters set up in your petition are at issue in the matter. It requires him to enquire into it. I think the labor involved would be the same.

Q. Suppose his interest would be $400; do you think $1,000 would be a fair fee then?

A. Yes, sir; it might if — order to the successful defence of the case, it was necessary to investigate all those questions.

Q. The labor might be the same, but not the amount of the interest the client also has?

A. It is the interest to have it successfully defended, and the lawyers' fee is involved in the dissolution of such an injunction.

Q. Taken into consideration with the amount of interest the client has also?

A. Yes, sir; sometimes.

Redirect examination:

Q. In a case of this kind the defendant would have to defeat entirely plaintiff's action before his reconventional demand for damages could be considered?

A. Certainly.

T. KELLEY, witness for the defendants, being duly sworn, testified as follows:

143 Q. You have done a good deal of levee-work in your time, have you not?

A. Yes, sir.

Q. Have you done any within the last twelve months?

A. Yes, sir.

Q. In the last twelve months what has been the usual and customary hire of a team for levee-work—that is, a pair of mules or horses and a scraper or plow, whatever they work with?

A. From $3.25 to $3.50, and some have even paid $4.00. I believe they pay $4 right here now.

Q. Do you mean per day?

A. Yes, sir.

Q. About how much would the hire of the driver be?

A. Seventy-five cents sometimes, sometimes a dollar, whatever you can get them at; it is owing to the scarcity of labor.

Q. The use of the team and the scraper would be worth from $2.50 to $3 per day without the driver?

A. Yes, sir.

Q. What is the cost of feed per day for a team—the average or usual cost?

A. It is owing to the distance you have to haul it. If you have to haul it, it costs more. The cost of feeding a team here in town is not so much as feeding a team down the river.

Q. About how much would it be down at this dam?

A. It would average there, I think, about seventy-five cents a day.

Q. How are these teams usually hired, by the day, week, or month?

A. Sometimes by the month or day; never by the week; they are principally paid by the day; so much a day for teams and drivers.

Q. For what time are they hired?

A. To make a day's work principally, ten hours' work.

Cross-examination:

144 Q. How much corn and hay will a team eat in one day, or, in other words, how long will a bundle of hay and a bushel of corn feed a team?

A. I don't know about the quantity of hay; my teams have all the hay they can eat put in the rack for them.

Q. How much corn will they eat?

A. A team working out will eat considerably over a bushel of grain a day.

Q. A pair of mules?

A. Yes, sir; a bushel a day won't feed a pair of mules working on a levee.

Q. Did you ever feed a team and measure the corn and see a pair of mules eat a bushel of corn in a day?

A. Yes, sir; thousands of them.

Q. What sort of mules were they?

A. They were mules fifteen to seventeen hands high.

Q. That would make for a pair of mules 365 bushels a year?

A. I have not calculated by the year; I have calculated by the day, and I have fed them myself and measured it out to them.

Q. You say you don't know how much hay they can eat?

A. I never measured the hay to stock. I fill up the rack and let them eat what they want.

Q. Do you know what corn has been worth this season per bushel?

A. Along between 50 and 60 cents.

Q. Then, if they eat a bushel of corn in a day, it would cost between 50 and 60 cents a day?

A. Yes, sir.

Q. Do you know what hay was worth?

A. We were buying it here in town for about 50 cents for 75 or 80 pounds—about $8 a ton.

Q. What would it come to by the bale?
145 A. I never buy hay by the bale.
Q. Buying by the ton, what would a bale be worth?
A. I don't know what a bale would weigh.
Q. 100 pounds.
A. That would be about $10 a ton.
Q. Then it would be more than 50 cents a bale. Will a pair of mules eat 100 pounds of hay in a day?
A. No, sir; I reckon not.

R. K. COLQUITT, witness for the defendants, being duly sworn, testified as follows:

Q. Are you now engaged as a contractor in constructing levees?
A. Yes, sir.
Q. How long have you been engaged in that kind of business in this neighborhood?
A. About ten years, off and on.
Q. What is the usual and customary hire of a team for levee-work, consisting of two horses or mules and their gear and scraper or plow and a driver?
A. It would cost about $3.25 to $4 a day.
Q. Leaving out the driver, what would the use of the team be worth?
A. The driver is generally included. He is paid generally about 75 cents to a dollar a day. Right around here I think we have only paid 75 cents a day. That was during last fall.
Q. What is the cost of feeding a team per day engaged in levee-work?
A. I estimate it at 75 cents a day.
Q. That includes feed and attention to the mules and everything else?
A. Yes, sir.

Cross-examination:

Q. Do you know the Grigsby Island place?
146 A. Yes, sir.
Q. How far do you live from it?
A. I live about three or four miles from it.
Q. It is a place that has in the past been in a high state of cultivation?
A. Yes, sir; most of it.
Q. About how many acres has there been under cultivation?
A. I don't know. I never saw it measured.
Q. You have been a farmer?
A. Yes, sir.
Q. Give us an estimate of the number of acres in cultivation.
A. About between 500 and 800 acres.
Q. Didn't they make crops there from 1880 to 1890 without them being destroyed from overflow?

A. That is more than I can say. I think it had some overflows during that time, but I don't know to what extent they damaged the crop.

Q. Do you know whether Hart made or lost money on this contract for building this dam?

A. No, sir; I don't know.

Q. Did you ever hear him say?

A. Yes, sir.

Q. What did he say?

A. Said that he lost money.

T. C. JOHNSON, witness for the defendants, being duly sworn, testified as follows:

Q. How long have you been living in Shreveport and vicinity?

A. I have been here between thirty-eight and forty years. I come up here in 1853. I have been here since 1855.

Q. Do you own a plantation just below Hart's island, called the *the* Dixey place?

147 A. It is below Shreve's island, at the foot of Hart's island. Sand Beach bayou just divides it.

Q. How long have you owned that place?

A. I can't say just exactly the time; it has been about fifteen years since I bought that place.

Q. Do you know anything of Bayou Pierre between Hart's island and Tone's bayou?

A. Yes, sir; I know Bayou Pierre and Tone's bayou all the way down to Red Bluffs.

Q. What is the navigable condition of Bayou Pierre from Hart's island down to Tone's bayou?

A. It has never been navigated since I knew it.

Q. How long have you known it?

A. Thirty-six or thirty-eight years.

Q. What is the present condition of Bayou Pierre from the point at which it leaves Old river down to Tone's bayou?

A. I could not tell you the amount of rafts in it, but it ain't never been navigable for a skiff. Years ago I tried to get through it in a skiff and could not do it.

Q. It hasn't been navigable even for a skiff for how many years?

A. For 36 or 38 years. At the mouth of Tone's bayou in 1873, when they cleaned out this raft above Shreveport, they turned the drift into Tone's bayou, which accumulated this raft much further than it was.

Q. At what point in Bayou Pierre is this levee being constructed?

A. It is Old river now.

Q. Where is the dam being built, where it starts?

A. Right where the bridge is, where it makes the bend, right there, and this stream, Old river, runs right straight out from Shreve's island.

Q. This dam is constructed in Bayou Pierre about 100

148 yards below the bridge?

A. Yes, sir.

Q. And it is not navigable below the dam?

A. It is about a mile down, I think, to the first rock heap; I could not tell the proper distance.

Q. You stated that Bayou Pierre, from Tone's bayou to Old river, is not navigable. This dam is at the head of this part of Bayou Pierre that is not navigable—it is located there?

A. Yes, sir.

Q. Does this dam built there in any way interfere with the navigation of Bayou Pierre?

A. It is put up above high-water mark.

Q. Does it interfere with navigation?

A. It has never been navigated.

Q. Then it cannot interfere with the navigation of Bayou Pierre?

A. I don't think so. I know it could not be navigated when the dam was not there.

Q. Don't you know that this dam does not interfere with the navigation of Bayou Pierre?

A. Yes, sir; I know that.

Cross-examination:

Q. Do you know whether or not the lower Bayou Pierre has been navigated as high as Red Bluff?

A. I don't know it within myself; I heard them say that they took a boat up that bayou as far as that lake down there.

Q. What is the width of Bayou Pierre where the dam is thrown across it?

A. I never measured it; I couldn't give you the exact width of it.

Q. Can't you give me some idea of it?

A. I think the main bayou there is probably—this levee is across the bayou, and it is different from the bluff right over on
149 the bank, and there has been three or four little channels sort of washed out.

Q. How wide is it there?

A. The water that was in it was——

Q. I didn't ask you the width of water. I asked you how wide it was.

A. I couldn't give the width of the banks.

Q. Could you come in a mile of its width?

A. I could give you in a half mile of it I expect.

Q. About how wide is it?

A. From two hundred yards to a quarter of a mile; maybe not so much.

Q. You say you could not go down the bayou in a skiff scarcely?

A. Well, yes, sir; we could drag it around a rock heap and walk. I went down there hunting once or twice and had to pull it over dry land in lots of places.

Q. The reason that you could not go down there was because there was rafts and obstructions in it?

A. Yes, sir.

Q. At what stage of the water was it that you could not go down there; was it high or low?

A. It was tolerably high; not so high as it was last summer, but it was high enough to go down there.

Q. Then the only trouble that you had was the logs, trees, and obstructions that were in it?

A. Yes, sir.

Q. Was the water that was below this dam shallower than it was above, or was it about the same?

A. I could not give you that accurately.

Q. Generally was it about the same below as above it since you have known it, or was it much shallower above or below, or how?

A. When the bayou goes down it leaves it in holes.

Q. I asked you about what was the relative quantity of
150 water above or below the dam; whether the water is shallower above or below.

A. I don't think there is a great deal of difference, with the exception of the holes along the main channel of the bayou. Of course there are deep places and shallow places.

Redirect examination:

Q. Have you ever seen Bayou Pierre dried up—any part of it?

A. Yes; I have hauled wood over it dry; I have hauled brick over it to build chimneys.

Q. I understand you to say that the channel of Bayou Pierre below the dam is full of holes?

A. Yes, sir; there is holes. I have been along there and fished in them holes at low water on them reefs and high places where it would be dry.

Q. Were those reefs between the holes dry in ordinary water?

A. They are dry to go across when there is no navigation in Red river for as large boats nearly as comes up here.

Defendants closed.

E. H. RANDOLPH, witness for the plaintiff, being duly sworn, testified as follows:

Q. You are a practising member of the Shreveport bar?

A. Yes, sir.

Q. And have been here for a number of years?

A. Since 1880.

Q. Plaintiff sues to enjoin the building of a dam across Bayou Pierre, alleging that the effect of that dam would be to damage her $20,000 or $25,000. She couples with that another action to recover damages, but she asks for a fee of $1,000 for suing out and prosecuting to final judgment this injunction to restrain the building of this dam. I will ask you if, in your opinion, that is a reasonable fee.

151 A. I think it is a reasonable charge.

Q. Defendant answers that — doing the work under a contract with the State, for which he is to receive $4,000, and that he has been damaged already by the suing out of this injunction by delay, loss of time, etc., some $1,500, and asks that the injunction be dissolved and for attorneys' fees. I will ask you what, in your opinion, would be a fair fee for taking the case for dissolving the injunction?

A. As near as I can judge from the statement of the case, in the neighborhood of $250.

Q. You were in court and heard the statements made to Messrs. Wise and Alexander a few minutes ago?

A. Yes, sir.

R. T. TERRELL, witness for the plaintiff, being recalled, testified as follows:

Q. What are the average number of acres that have been in cultivation on this Grigsby Island place for the last several years?

A. I think we had about 600 or 650 acres; something like that. I never had the place measured.

Q. It is a well-equipped plantation, with cabins, etc.?

A. Yes, sir; all in very good shape.

Q. Is it equipped with a gin and gin-house?

A. Yes, sir.

Q. Taking the time from 1880 to 1890, did it make good crops?

A. I have only been there since 1884. That was the first crop I ever made there.

Q. Do you know anything of it previous to that?

A. No, sir; I was there from 1884 or 1885 to 1890.

Q. How was it in 1884?

A. In 1884 there was an overflow.

Q. How was it in 1885?

152 A. 1885 was the shortest crop we ever had on the river.

Q. When other people made good crops you did?

A. Yes, sir.

Q. Has the place been improved since you took charge of it, and what number of acres were reclaimed?

A. Yes, sir; I think we put in between 75 and 100 acres that was not worked when Mr. Kendall had the place.

Q. Were the levees on it better than in 1884?

A. Yes, sir; we have made considerable levees since that.

Q. About this place overflowing in 1890, was the cause of that overflow because the water was up to a sufficient height to run over the levees?

A. In 1890 it broke on the biggest levee we had.

Q. What caused the overflow of 1892?

A. In 1892 it broke through a wagon road through a levee. In 1890 we did not consider the place where it broke a weak piece of levee. We thought it was the strongest piece we had.

Q. The water in 1890 did not rise high enough to go over the levee?

—. No, sir.

Q. Taking the break of 1892, what caused that?

A. We had too much water for one thing. The immediate cause of the overflow was a wagon road we had through a levee. I sent a man over there to fix it, and instead of doing it as it should have been done he built a little half moon there of loose dirt—fresh dirt.

Q. Did you have a good crop in 1891?

A. Yes, sir.

Q. I will ask you to look at the place on the map here marked Grigsby's island and state where the drain is and how the place is drained.

A. We have got a twenty-foot tap-ditch commencing at
153 the point marked "X" to the point "Y;" then the same ditch drains back by a culvert through the levee at the point "Y."

Q. I will ask you this: When the water in Red river is sufficiently high to be against the levees on this side next to the main channel of Red river, if at that time you are still able to drain this place through the culvert "Y."

A. No, sir; we cannot drain it.

Q. At what points can you drain it, if at all?

A. We cannot drain it until the water gets low enough to be below the mouth of the culvert. We can cut the levee and let it run over the levee at the point "Y."

Q. That is, when the water is still six inches lower on the other side?

A. Yes, sir.

Q. That is the only way you have of draining it—through that culvert?

A. Yes, sir.

Q. That is, in case of overflows you have been speaking?

A. Yes, sir.

Cross-examination:

Q. In 1892 did the waters of Red river rise higher than the levees around Grigsby's island?

A. It ran over in a few places, and in front it ran over where we had no levees at all. I was not there, but afterwards I could see where it had run over in a few places. There was a good deal of the levee above the water of 1892.

Q. How much?

A. I noticed that we had eight to ten inches; that it did not run over.

Q. It only run over, then, in places?

A. Yes, sir.

154 Redirect examination:

Q. What time of the year was it in 1892 that the overflow occurred?

A. I think it was in May.

Q. But for this break in the levee in 1892 wouldn't it have been a very easy matter to keep the water out?

A. Yes, sir; I think I could have kept the water out.

Q. After the break occurred?

A. No, sir; I didn't pay any more attention to it; didn't go over to the place at all.

Q. Did the overflows of 1890 or 1892 wash the place or put sand on it to any amount, or did it injure the place materially inside of the levees?

A. The place outside of the levees was covered with sand.

Q. Otherwise it did not damage it?

A. No, sir; I don't think it damaged it at all.

The State of Louisiana, intervenor, adopts all the testimony given on behalf of the defendant Archie Hart.

Plaintiff filed in evidence, with leave to substitute copies, townships maps of the parish of Caddo, as found in the book Township Maps, on pages 11, 12, 16, and 20.

J. E. ROBINSON, witness for the plaintiff, being duly sworn, testified as follows:

Q. You are a deputy sheriff of this parish?

A. Yes, sir.

Q. You are the same officer whose name is signed to the return on the writ of injunction in this case?

A. Yes, sir.

Q. What time of the day was it when you served it on the defendant Hart?

A. Between twelve and one o'clock.

Q. Were he and his men at work or resting?

A. They were not at work then.

Q. It was the noontime hour and they were resting?

A. Yes, sir.

Evidence closed.

155 I hereby certify that the above and foregoing seventy-three pages contains a true and correct record of the evidence adduced on the trial of said cause, together with exceptions thereto, the rulings of the court thereon, and the exceptions taken thereto.

C. J. EVANS, JR.,
Official Stenographer.

(Endorsed:) Filed Ap'l 3, '93. F. A. Leonard, clerk.

Copy of Donation—M. L. White to Lillian G. White.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day, before me, F. A. Leonard, a duly qualified notary public in and for said parish and State, personally appeared Mrs. Martha L. White, of said parish and State, wife of Reuben White, herein aided and authorized by her husband, who declared that for and in the consideration of the love and affection she has for her daughter, Lillian Gertrude White, she does by these presents grant and donate, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty against all former owners of the land herein donated, unto the said Lillian Gertrude White, her heirs and assigns, the following-described lands, to wit:

All of Anderson island, sometimes called Grigsby's island, situated on Red river, in the parish of Caddo, Louisiana, being same property acquired by R. White from L. K. Grigsby and others by public act passed on the 5th of January, 1860, said island containing 783 acres, more or less, with improvements thereon;

To have and to hold said property to the said donee, her heirs and assigns forever.

And the said donee, Lillian Gertrude White, being present, declared that she accepted this act of donation and signs the
156 same with the said donor.

The certificate of mortgages is waived by the parties.

Done and passed in said parish, in presence of attesting witnesses, on this the 8th day of Aug., A. D. 1883.

(Signed) M. L. WHITE.
REUBEN WHITE.
LILLIAN GERTRUDE WHITE.

Attest: R. C. BONEY.
C. W. VAN HOOSE.

F. A. LEONARD, *Notary Public.*

(Endorsed:) Filed and recorded August 13, 1883. Allan V. Wilson, d'y clerk & *ex off.* d'y recorder.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true and correct copy of the original act as the same now appear on file and of record in my office.

Given under my hand and seal of office this 14th day of March, 1893.

F. A. LEONARD,
Clerk and ex Officio Recorder.

"A."

(Endorsed:) Filed in evidence in suit 4048, March 14, '93. F. A. Leonard, clerk.

In District Court, Parish of Caddo, State of Louisiana.

LILLIAN W. EGAN
vs.
A. HART *et als.* } No. 4048.

Deposition of George H. Russell, taken by consent, on behalf of the plaintiff *of* the above-entitled suit; all matters of form waived; all legal objections to admissibility reserved to be made on the trial of the case.

LAND & LAND, *Att'ys.*
J. R. LAND, *Dist. Att'y.*

157 GEORGE H. RUSSELL, sworn, says:

I have been living on Red river ever since 1870. Contractor and builder by profession, and have steamboated two years. I know where Scopini's cut-off is. There is an old river there. The main river runs now through said cut-off. The length of the old river is between 4 and five miles around, and about one hundred yards across. Both prongs of Old river are dry at a low stage of water in Red river—say about six feet on *guage* at Shreveport. All old rivers continue to fill up by deposits and get shallower and shallower. Tone's bayou makes out of this Old river about a mile and three-quarters below the head of the cut-off. I now draw below a diagram of Old river and cut-off and Tone's bayou and Bayou Pierre as follows:

I am satisfied that in a few years the prongs of Old river will fill up with deposits. Length of Tone's bayou is about $\frac{3}{8}$ of a mile from the point where it makes out of Old river. I have seen boats go down Tone's bayou and into Bayou Pierre and I have steamboated through Bayou Wincey into Bayou Pierre.

Cross-examined:

I am forty-three years old. I came out here in 1869, and the Scopini cut-off was made before that time. U. S. dam was put across Old river about ten years ago. It is gone—washed away. Some of the piling said to have been put in Old river during the late war still remains. I saw a steamboat go through Tone's bayou in 1874 or 1875. The first bridge built across Tone's bayou was built by me. It was a public bridge, built by orders of the police jury. It was a pile bridge. It was finished about last of April, 1892. It stood about thirty days and was carried away by the drift and high water of 1892. In November, 1892, I constructed another bridge over Tone's bayou at the same place. This bridge was washed away by drift and high water of fall of 1892. Tone's bayou at the
158 point where said bridges were constructed is 271 feet wide across the water. The average depth of the water at the said

point is from 24 to 25 feet when the *guage* at Shreveport registers 10 feet above low-water mark. The top of the banks is about 8 or 10 feet above the water at that stage.

G. H. RUSSELL.

Sworn to and subscribed before the undersigned, a notary public in and for the parish of Caddo, La., on this 15th day of March, A. D. 1893.

CAL. D. HICKS,
Notary Public.

(Endorsed:) Filed M'ch 14, '93. C. F. A. Leonard, clerk.

D. C., First Jud'l District Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.* } No. 4048.

Testimony of W. T. Boardman, a witness for plaintiff, taken by consent of parties before J. A. Thigpen, notary public in and for Caddo parish, La., on this the 22nd day of February, A. D. 1893, which is hereby agreed may be used in evidence on the trial of the above numbered and entitled cause, subject to all legal objections, except as to manner of taking said testimony.

F. G. THATCHER,
Att'y for Plaintiff.
LAND & LAND, *Att'ys.*
J. R. LAND, *Dist. Att'y.*

Mr. W. T. BOARDMAN, being first duly sworn, says:

I am a steamboat captain plying Red river. I have been in the steamboat business since 1849, in Red river. In 1859 I left Shreveport with the steamboat "Sunbeam" for Bayou Pierre; went down the river (Red river) 25 miles to Tone's bayou, and went through that bayou into Bayou Pierre and then to Red Bluffs, about ten miles below, and took on 800 bales of cotton; then down the bayou, taking on cotton — Marseilles, Marvel point, Point Republic, or Jordan. On leaving Jordan's we had on the boat about 1,400 bales of cotton. I went down as far as the head of Spanish lake,
159 about 12 miles from Grand Ecore, when the boat struck a snag and sunk.

I then went to Grand Ecore and got the steamboat "Duke" to come up from Grand Ecore, through the main Bayou Pierre, to take the load of the sunken steamer. This steamboat "Duke" was a large side-wheel steamer, with capacity of 1,800 or 2,000 bales of cotton. This was my first experience in navigation in Bayou Pierre. In 1861 I chartered the side-wheel steamer A. G. Brown especially for the Bayou Pierre trade, and made many trips between New Orleans and Red Bluffs.

Red Bluffs is a point on Bayou Pierre, about 10 miles below the junction of Tone's bayou and Bayou Pierre. The war coming on

interrupted business and I withdrew from the trade. I have made many trips to Red Bluffs from Shreveport, going by way of Tone's bayou, with different boats, and since that time I have taken the large side-wheel steamboat "La Belle" down Bayou Pierre from its source, a few miles below Shreveport, to the picnic grounds, about two miles from the river; this was about 15 years ago. The length of Tone's bayou from Red river to its intersection with Bayou Pierre is about one-half mile.

I have not been in Bayou Pierre for a great many years. I know nothing of Bayou Pierre from its head to its intersection with Tone's bayou.

It has been twenty years since I have taken a boat through Tone's bayou. I have never been through Bayou Wincey into Bayou Pierre.

Cross-ex.:

I do not know whether Bayou Pierre is navigable from Grand Ecore up now. I think the last boat that went up from Grand Ecore was in 1861.

During the time I navigated Bayou Pierre it was navigatable when the water was at a medium stage in Red river, say
160 about 12 feet above low water at Shreveport. I have never been in Bayou Pierre during low water *at* in Red river.

W. T. BOARDMAN.

Sworn to and subscribed before me this 22nd day of February, A. D. 1893.

J. A. THIGPEN,
Notary Public.

Notary fee, $2.50, paid by plaintiff.

J. A. THIGPEN, *Not. Pub.*

(Endorsed:) Filed March 14, '93. D. F. A. Leonard, clerk.

D. C., 1st Jud'l Dist., Louisiana, Caddo Parish.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*
} No. 4048.

Testimony of W. P. Scarborough, a witness for plaintiff, taken by consent of parties before J. A. Thigpen, notary public in and for Caddo parish, La., on this the 14th day of December, A. D. 1892, which is hereby agreed may be used as evidence on the trial of the above numbered and entitled cause, subject to all legal objections except as to manner of taking said testimony.

J. C. EGAN.
F. G. THATCHER,
Att'y for Pl'ff.
LAND & LAND,
Att'ys for Defe'd'ts.
JOHN R. LAND.

W. P. SCARBOROUGH, being sworn, says:

Q. Mr. Scarborough, where do you live?

A. I live in Red River parish and have been in what is now Red River parish for thirty-eight years. I own property on both sides of Bayou Pierre. I had control of the steamboat "New Haven" in the year 1890, cleaning out Bayou Pierre. I was blasting in Bayou Pierre and chopping through the lake. The lake I refer to is between Carnisheau lake and Greening's ferry. Last January, one year ago, we carried the steamer "Dortch" up Bayou Pierre as far as Carnisheau lake. We went as far as my place to take out a cotton crop which we did carry out. Captain W. F. Dillon was in
161 command of the Dortch at that time.

About the 15th of last May the Dortch went up Bayou Pierre as far as Gravel point—Frierson's landing. Captain Wm. Gillan was in charge on that trip.

Since last May a good many steamboats have gone up Bayou Pierre as far as Jenkin's landing, which is about two miles below Greening's ferry. Before the New Orleans branch of the Texas & Pacific railroad was built a number of boats ran up Bayou Pierre during good stages of water and carried out the crops of the country around Mansfield. The Mansfield landing is called Gravel point.

From the source of Bayou Pierre to Red Bluff is about twelve or fifteen miles, and the distance from Red Bluff to the confluence of Bayou Pierre with the Wincey is between twenty or thirty miles.

Part of Bayou Pierre flows into Wincey bayou and part into Old Bayou Pierre, and part goes on and empties into Red river at Grand Ecore.

Bayou Pierre is navigated by coming into Bayou Wincey and from Bayou Wincey into Bayou Pierre.

Bayou Pierre has been a navigable stream at certain seasons of the year ever since I can remember. It has been navigable by steamboats. I know that the steamboat "Marco" went up Bayou Pierre.

The boats I have named are boats built for Red River coast traffic and do regularly ply the waters of that river. About five or six years ago I went up Bayou Pierre as far as Williams' landing, which is about five or six miles above Jenkin's landing, on the steamers "Hallette" and "Garland," which are regular steamboats running between Shreveport and New Orleans.

162 Cross-examination:

I am forty years old; I am a farmer; I have owned a plantation on Bayou Pierre about two or three years.

The same place has been owned by my family for eight or ten years. The Bayou Pierre landing on my place is ten or twelve miles above the Mansfield landing. The Mansfield landing is in an arm of Bayou Pierre. This landing is three or four miles west of the main channel of Bayou Pierre.

It has been about seven or eight years since there has been a steamboat at Mansfield landing.

I do not know how long it had been prior to the trip of the "Dortch" to my place since steamboats had been to the landing on my place of my own knowledge.

My plantation on Bayou Pierre is about twelve or eighteen miles below Red Bluff. Within my knowledge the steamboat Dortch went eight or ten miles above my place to Frierson's landing in May last. This is the highest point of navigation within my knowledge. Tone's bayou flows out of Red river about twelve miles below Shreveport. It flows into Bayou Pierre and is about three miles long.

From Frierson's landing to Red Bluffs is about four to six miles.

Redirect examination:

The distance from Frierson's landing on Bayou Pierre via Bayou Pierre and Wincey bayou to Red river is about thirty-five or forty miles.

Wincey bayou is about six miles long.

WM. P. SCARBOROUGH.

Sworn to and subscribed before me this 14th day of December, A. D. 1892.

J. A. THIGPEN,
Notary Public.

WM. P. SCARBOROUGH recalled.

163 There is a mile or a mile and a half of raft in Tone's bayou. I think this raft cuts off half of the flow of water that would otherwise flow into Bayou Pierre through Tone's bayou.

There is a large raft opposite Tone's bayou, in Bayou Pierre, which is an extension of the raft which is in Tone's bayou. This raft is composed of logs and sand. Trees are growing on it.

Part of the raft is solid and part floating.

At the present stage of water in Red river, when Bayou Pierre is not navigable, Bayou Pierre is fed chiefly through Tone's bayou. When Red river gets three or four feet higher, then two-thirds of the water, if not more, goes through Bayou Pierre at its outlet from Red river; I mean by this that two-thirds of the water forming Bayou Pierre below its junction with Tone's bayou leaves Red river through Bayou Pierre and the other third through Tone's bayou.

Bayou Pierre is navigable as far as Jenkin's landing today, and when the guage at Shreveport is 19.9 feet above low water it is navigable as far as my place and Frierson's landing.

Cross-examination:

There are rafts in Bayou Pierre from its source, a few miles below Shreveport, to Red Bluffs. I do not mean a continuous raft, but small rafts.

Tone's bayou is about three hundred feet wide at the ferry.

The ferry is about a mile from Red river. Its average width is about three hundred feet. I guess that from the tops — the banks of this bayou to its bed is about twenty-two feet on an average. It is hard to say what is the average width of Bayou Pierre from Hart's island to Red Bluff. A part of it spreads out into lakes, as it does below. A part is confined within banks.

The average width of that portion confined in banks is about three hundred to three hundred and fifty feet. The average depth of this part from the top of the banks to the bed is about
164 twelve or fifteen feet.

There is a raft in Bayou Pierre opposite Red Bluff. This raft extends from four to sixteen miles above Red Bluff. It extends about a quarter of a mile below Red Bluff.

Tone's bayou flows into Bayou Pierre four or five miles above Red Bluff. About one mile below Red Bluff Bayou Pierre expands into Carnisheau lake. This lake will average two or two and one-half miles in width. In some places it is four miles wide.

The with of the channel of Bayou Pierre at my place is between three hundred and three hundred and fifty feet. The Government survey a few years ago showed the distance from the top of the bank to the bayou bed at this place to be fifty-two feet. The average depths for two miles is from forty-seven to fifty-two feet. This two miles is the distance between two broadened places called lakes.

At the present stage of water there is eight feet bank at my place on Bayou Pierre. All the country between Bayou Pierre and Red river is subject to overflows.

WM. P. SCARBOROUGH.

Sworn to & subscribed before me this 14th day of December, A. D. 1892.

J. A. THIGPEN,
Notary Public.

Notary fee, $3.00, paid by plaintiff.

J. A. THIGPEN, *Not. Pub.*

(Endorsed:) Filed March 14, '93. E. F. A. Leonard, clerk.

Answer to Interrogatories.

In 1st Dist. Court of Caddo Parish, Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.* } No. 4048.

Be it remembered that by virtue of the annexed commission, issued out of said court and addressed to any judge or justice of the peace or commissioner therein for Louisiana or other person au-

thorized by law to administer oaths, that I, D. H. Hayes,
165 notary public of said State and Red River county, have caused T. R. Armistead, Henry Marston, John Marston, Marion Bosley, Wm. Wilkinson, Fred. Wilson, Sam. Lisso, Chas. Egan, J. M. T. Elliott, *and* of said State and county of Red River, and witnesses named in said annexed commission, to appear before me, at my office, in the town of Coushatta, said State and county, on the 6th day of February, 1893, and first having duly sworn them separately on the Holy Gospel to declare the truth, the whole truth, and nothing but the truth, in reply to the interrogatories propounded to them, each made answers as follows, viz:

Answers of Marion P. Bosley.

To the 1st intgy. he anwers: In Coushatta, and has lived in Red River parish, La., for last 19 years.

To the 2nd intgy. he answers: Planter on Red river for many years.

To the 3rd intgy. he answers: Within 7 or 8 miles; his plantation is about one mile from where Bayou Wincey empties into Red river.

To 4th intgy. he says: I went up Bayou Pierre as a passenger on the steamer Dortch, entering through Bayou Wincey from Red river, in the year 1892, before the overflow came. The Dortch that trip went up to Frierson's landing. The boat had a good freight and considerable part of it was discharged at said landing, and brought out lot of cotton and seed.

To the 5th intgy. he says: I do, because I was on a boat that navigated it.

To the 6th intgy. he says: Yes; I have.

To the 7th intgy. he says: Steamer Dortch. I have heard of others, but cannot name them now.

To the 8th intgy. he says: At the time I went up Bayou Pierre
on the steamer Dortch it had freight for several places and
166 brought out cotton from both King's and Jenkin's places.

To the 9th intgy. he says: He went up Bayou Pierre as a passenger on the steamer Dortch.

To the 10th intgy. he answers: The Dortch is the only one that I have personal knowledge of; have heard of others.

To 11th intgy. he says: It is so considered.

To 12th intgy. he says: He does.

To 13th intgy. he says: He has lived near Coushatta many years and have heard of boats going up Bayou Pierre more or less every year and bringing out cotton from plantations on the bayou.

To the 14th intgy. he says: Not of his own knowledge.

Answers to X Intgy.

To 1st X intgy. he answers: He was a passenger on the steamer Dortch in 1892; went as high up as Frierson's landing. It was not considered high water at this point; do not know the stage of

water at this Shreveport; the landing the boat went to was said to be within 15 miles of Shreveport.

To X intgy. 2nd he says: He does not know.

To 3rd X intgy. he says: He can only give instance to the trip of the steamer Dortch in 1892 when it went up to Frierson's landing.

Answers of W. A. Wilkinson.

To the 1st intgy. he answers: That he resides near Coushatta, Red River parish, La., and was born there about 22 years ago.

To 2nd intgy. he answers: Have been farming, teaching school, steamboating, and am now studying law.

To 3rd intgy. he says: About six or seven miles.

To 4th intgy. he says: I was clerk on the steamer Marco in 1889, and the boat went up Bayou Pierre through the Wincey to bring out cotton to Red river. The boat went up to Greening's ferry on Bayou Pierre.

167 To the 5th intgy. he says: It was navigable as high up as I went.

To the 6th intgy. he says: He has.

To the 7th intgy. he says: Steamer Marco, of his own personal knowledge, and have heard of others, viz., Rosa Bland, Nat. Dortch, and perhaps others.

To the 8th intgy. he says: He knows that the steamer Marco took freight up Bayou Pierre for several places, and brought out cotton from the King and Jenkin's places.

To the 9th intgy. he says: I did, in the capacity of clerk.

To the 10th intgy. he says: Steamer Marco, Rosa Bland, and Nat. Dortch.

To the 11th intgy. he says: Yes.

To the 12th intgy. he says: He does.

To the 13th intgy. he says: He knows that Bayou Pierre is a navigable stream, and has been always so regarded.

To the 14th intgy. he says: He does not.

Answers to X Interrogatories.

To 1st X intgy. he says: Was clerk on the Marco, and went up the bayou in 1889; went up to Greening's ferry; do not know the stage of water at Shreveport when I went up the bayou.

To 2nd X intgy. he says: He does not know.

To 3rd X intgy. he says: He has no personal knowledge of any boat going higher up than Greening's ferry; have heard of boats going higher up.

Answers of Chas. Egan.

To 1st intgy. he says: Reside at Coushatta, La.; about 8 or 9 years.

To 2nd intgy. he says: He was planting in 1890 & 1891; am now reading law.

To 3rd intgy. he says: About six or seven miles now. In
168 1890 and 1891 lives two miles from Greening's ferry or Bayou Pierre.

To 4th intgy. he says: Have frequently known steamboats to navigate the bayou up to Greening's ferry; have heard of boats going higher.

To 5th intgy. he says: He knows it is navigable as high as Greening's ferry; do not know how much higher; since the falls were blown out, I know that boats can go above Greening's ferry.

To 6th intgy. he says: He has.

To 7th intgy. he says: Nat. F. Dortch, Marco, and Rosa Bland.

To 8th intgy. he says: In 1890 and 1891 cotton was shipped from and freight was received at Jenkin's place by boat.

To 9th intgy. he says: He has not.

To 10th intgy. he says: See answer No. 7.

To 11th intgy. he says: He does.

To 12th intgy. he says: He does.

To 13th intgy. he says: Bayou Pierre is navigable to Greening's ferry when Red river is navigable to this point. Boats enter Bayou Pierre through Bayou Wincey.

To 14th intgy. he says: He does not.

Answers to X Interrogatories.

To 1st X intgy. he says: Bayou Pierre is navigable; from having seen boats in said bayou; as to date, names of boats, said distance they went up said bayou, see answers to direct interrogatories; did not know the stage of water at Shreveport when boats were navigating Bayou Pierre.

To 2nd X intgy. he says: He does not know.

To 3rd X intgy. he says: Does not know of his personal knowledge of boats going higher than Greening's ferry, but have heard of boats going higher.

Answers of Sam. Lisso.

To 1st intgy. he answers: In Coushatta, La.; have lived
169 in Red River parish since its formation in 1871.

To 2nd intgy. he answers: Merchant.

To 3rd intgy. he answers: 7 or 8 miles.

To 4th intgy. he answers: He knows it is navigable at certain stages of water.

To 5th intgy. he answers: See answer above.

To 6th intgy. he answers: He has.

To 7th intgy. he answers: New Haven, Cornie Brandon, Marco, and probable others.

To 8th intgy. he answers: He knows nothing of his own personal knowledge.

To 9th intgy. he answers: He never did.

To 10th intgy. he answers: See answer above.

To 11th intgy. he answers: Yes.

To 12th intgy. he answers: He does, when there is sufficient water in the bayou.

To 13th intgy. he says: He knows nothing more.

To 14th intgy. he says: He does not.

Answers to X Interrogatories.

To 1st X intgy. he says: He knows nothing of his own knowledge, but his information is general from having frequent communication with the warehouseman at this place.

To 2nd X intgy. he says: He does not know.

To 3rd X intgy. he says: He does not know.

Answers of Fred. Wilson.

To 1st intgy. he answers: In Coushatta, La.; have resided in Red River parish since 1874.

To 2nd intgy. he answers: Warehouseman.

To 3rd intgy. he answers: About 6 or 7 miles.

To 4th intgy. he answers: He knows steamboats have been running in Bayou Pierre the last 20 years.

170 To 5th intgy. he answers: He considered it is so at certain stages of water. Steamboats enter Bayou Pierre through Bayou Wincey.

To 6th intgy. he says: He has.

To 7th intgy. he says: New Haven, Cornie Brandon, Rosa Bland, Nat. Dortch, and others; do not recollect all the names.

To 8th intgy. he says: He knows it to be a fact.

To 9th intgy. he says: He never did.

To 10th intgy. he says: See answer to 7th intgy.

To 11th intgy. he says: He does.

To 12th intgy. he says: He does.

To 13th intgy. he says: He knows that many years ago Captain W. T. Boardman and Capt. Ben. Fuller navigated Bayou Pierre and took freight direct from New Orleans for planters and merchants and carried out cotton and other produce; and further says, it would be a great convenience to planters on Bayou Pierre for navigation to be kept open.

To 14th intgy. he says: He does not.

Answers to X Interrogatories.

To 1st X intgy. he says: He knows that boats have been run in Bayou Pierre since 1875. I know this from having done a warehouse business generally on the river at and below Coushatta. See names of boats in answer to direct interrogatory. Capt. Fulton run the Ida Leon as a regular packet from Brownsville to Bayou Pierre in 1874 and 1875, taking in freight and bringing out cotton and connecting with boats on Red river at Brownsville. I was keeping warehouse there at the time.

Cannot state with any degree of certainty at what stage of water

at Shreveport that there would be navigation at Bayou Pierre, but boats could go in Bayou Pierre when there is good navigation in Red river at this place.

To 3rd X intgy. he says: He has no record of such trips,
171 and cannot say of his own knowledge.

Answers of J. M. T. Elliott.

To the 1st intgy. he answers: In Coushatta, La., and been in Red River parish since the formation.

To 2nd intgy. he says: He is sheriff of the parish.

To 3rd intgy. he says: About 6 or 7 miles.

To 4th intgy. he says: He knows that steamboats have navigated Bayou Pierre, but do not know how high.

To 5th intgy. he says: It has been so considered.

To 6th intgy. he says: Have heard that they did, but do not know of my own personal knowledge.

To 7th intgy. he says: Steamer Nat. Dortch, and have heard of others.

To 8th intgy. he says: He has only heard that such was the case.

To 9th intgy. he says: Never did.

To 10th intgy. he says: Nat. Dortch and others.

To 11th intgy. he says: Yes.

To 12th intgy. he says: I have heard so.

To 13th intgy. he says: He knows nothing more.

To 14th intgy. he says: He does not.

Answers to X Interrogatories.

To 1st X intgy. he answers: That he knows the Nat. Dortch went up Bayou Pierre in 1892 and he has frequently heard the whistle of boats going up and coming out of the bayou, but do not know what freight they carried up or brought out. Boats enter Bayou Pierre from Red river through Bayou Wincey. Do not know the stage of the river at Shreveport when Bayou Pierre is navigable.

To 2nd X intgy. he says: He does not know.

To 3rd X intgy. he answers: He does not know.

Answers of Henry Marston.

172 To 1st intgy. he answers: Near Coushatta; have lived in Red River parish 12 years.

To 2nd intgy. he answers: Farming.

To 3rd intgy. he answers: About two miles.

To 4th intgy. he answers: I know it is navigable, for the steamer Nat. Dortch has gone up the bayou today, Feb. 6, 1893.

To 5th intgy. he answers: Yes.

To 6th intgy. he answers: He has.

To 7th intgy. he answers: Marco, Cornie Brandon, New Haven, Hallette, Nat. Dortch, Rosa Bland, and others.

To 8th intgy. he says: I went one trip on the Marco, when she carried freight up the bayou and brought cotton out from Jenkin's place and King's plantation.

To 9th intgy. he says: I simply went up the bayou on the Marco and took a lot of hands to assist in loading and unloading the boat.

To 10th intgy. he says: See former answer.

To 11th intgy. he says: It is.

To 12th intgy. he says: He does.

To 13th intgy. he says: He knows nothing more.

To 14th intgy. he says: He don't know.

Answers to X Interrogatories.

To 1st X intgy. he answers: Because he has seen boats navigating the bayou every year since he has lived in the parish. I have known of boats going so high as Jenkin's plantation and have heard of boats going higher up; do not know anything about the stage of water at Shreveport when the boats go in the bayou.

To 2nd X intgy. he says: He don't know.

To 3rd X intgy. he says: He does not know of his own personal knowledge of any boat going higher than Jenkin's place; do not recollect exact date.

173 *Answers of John Marston.*

To 1st intgy. he answers: Near Coushatta; have resided in Red River parish about 12 years.

To 2nd intgy. he answers: Farming.

To 3rd intgy. he answers: About two miles.

To 4th intgy. he answers: He knows it to be a fact. Several years ago the captain of steamboats employed me to watch cotton they brought out of the bayou until a steamboat from Red river took it on board.

To 5th intgy. he answers: It is.

To 6th intgy. he answers: He has.

To 7th intgy. he answers: Marco, Cornie Brandon, Rosa Bland, Blue Wing, Nat. Dortch, and others.

To 8th intgy. he answers: He knows it has been done.

To 9th intgy. he answers: He never did.

To 10th intgy. he answers: See answer to 7th intgy.

To 11th intgy. he answers: He does.

To 12th intgy. he answers: He does.

To 13th intgy. he answers: Knows that before the falls in Bayou Pierre were blown out that the planters on Red bayou had to haul their produce to a landing below the falls, but now boats can navigate easily as high up as Jenkin's place.

To 14th intgy. he says: He does not.

Answers to X Intgys.

To 1st X intgy he answers: Because he has seen boats in the bayou every year, when at home, since I have lived in the parish. It was navigated by boats previously named. Do not — what stage the water has to be to admit navigation in Bayou Pierre. Boats enter Bayou Pierre from Red river through Bayou Wincey.

To 2nd X intgy. he answers: He don't know.

To 3rd X intgy. he answers: Jenkin's place. He saw the cotton marked Jenkins.

174 *Answers of T. R. Armistead.*

To 1st intgy. he answers: He lives near Coushatta. He has lived in Red River parish since its formation in 1871 and in De Soto parish the last forty years.

To 2nd intgy. he answers: Planter.

To 3rd intgy. he answers: About two and a half miles.

To 4th intgy. he answers: He knows that they do.

To 5th intgy. he answers: He does.

To 6th intgy. he answers: Yes.

To 7th intgy. he answers: Nat. Dorteh, Marco, Rosa Bland, Wheelock, Augusta, and others.

To 8th intgy. he answers: He is satisfied such has been the case.

To 9th intgy. he answers: Never did.

To 10th intgy. he answers: See answer to 7th intgy.

To 11th intgy. he answers: Yes.

To 12th intgy. he answers: That they do.

To 13th intgy. he answers: That any obstruction placed in Bayou Pierre to destroy its navigation would be detrimental to the interest of planters living on said bayou.

To 14th intgy. he answers: He does not.

Answers to X Interrogatories.

To 1st X intgy. he answers: He knows the bayou is navigable from having seen boats going up and down said bayou the last forty years. The boats principally named and others have navigated said bayou, going from Red river through Bayou Wincey. Boats can run in Bayou Pierre when there is 10 feet on the guage at Shreveport or less.

To 2nd X intgy. he answers: He don't know.

To 3rd X intgy. he answers: He don't know.

STATE OF LOUISIANA, }
Parish of Red River. }

175 Before me, the undersigned authority, personally came and appeared M. P. Bosley, W. A. Wilkinson, Chas. Egan, Sam. Lisso, Fred. Wilson, J. M. T. Elliott, Henry Marston, John Marston, T. R. Armistead, of Red River parish, said State, who, on the Holy

Gospel, each first being separately and duly sworn by me, declared and stated that in the previous answers to the interrogatories and cross-interrogatories propounded in the foregoing and numbered cause he has stated the truth, the whole truth, and nothing but the truth to the best of his knowledge.

M. P. BOSLEY.
W. A. WILKINSON.
CHAS. EGAN.
SAM. LISSO.
FRED. WILSON.
J. M. T. ELLIOTT.
HENRY MARSTON.
JOHN MARSTON.
T. R. ARMISTEAD.

Sworn to & subscribed before me this Feb. 6th, 1893.

D. H. HAYES,
Notary Public.

Said witnesses above named having been first by me separately duly sworn as above stated, each one made the above and foregoing answers to the interrogatories propounded, which were reduced to writing by me in the presence of each witness, as dictated by him, and were by each of said witnesses subscribed in my presence, and all done on the day and dates above written as the date hereof in said parish of Red river and State aforesaid.

D. H. HAYES,
Notary Public.

In 1st District Court, Caddo Parish, Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*
} No. 4048.

To the honor. the judge of the first district court, holding session in and for the parish of Caddo, Louisiana:

The petition of plaintiff in above-entitled cause respectfully shows that she desires the testimony of T. R. Armistead, Henry Marston, John Marston, Marion Bosley, Will. Wilkinson, Fred. Wilson, Sam. Lisso, Chas. Egan, J. M. T. Elliott, and A. J. Fortson, resi-
176 dents of Red River parish, La., and H. J. Brinker and George Rea, of Orleans parish, La., competent and material witnesses for her, and without whose evidence she cannot safely go to trial. Wherefore she prays for an order directing service hereof to be made on defendants of their attorneys, and, after due legal delays, that a commission issue and be directed to the clerk of the parish of Red river, as special commissioner, or to any judge or justice of the peace or other person authorized by law to administer oaths for general purposes, authorizing them or either of them to take the

answers of said witnesses, and that a return day be fixed, and for costs and for general relief.

F. G. THATCHER,
J. C. EGAN & SON,
Att'ys for Pl'ff.

Let service hereof be made on def'ts or their att'ys, and after the legal delays let the commission issue and be addressed to T. E. Paxton, clerk of the district court for the parish of Red River, special commissioner of said parish, or to any judge or justice of the peace or other person authorized by law to administer oaths for general purposes, and that they or either of them be authorized and empowered to take the answers of said witnesses and due return make on or before the — ——, 1892, the return day hereof.

Done and signed officially.

Interrogatories.

Intgy. 1st. Where do you reside and how long have you lived in Red River parish?

Intgy. 2. What business do you follow?

" 3. How far do you live from Bayou Pierre?

" 4. What do you know about steamboat- navigating Bayou Pierre?

Intgy. 5. Do you know whether or not Bayou Pierre is
177 a navigable stream?

Intgy. 6. Have you known steamboats to take freight up said bayou and bring out cotton and produce?

Intgy. 7. Name some of the steamboats that you have known to run in the waters of Bayou Pierre.

Intgy. 8. What do you know about freight being taken up Bayou Pierre and cotton brought from the Jenkin's place and King's plantation by steamboat?

Int'y 9. Have you ever travelled on a steamboat up Bayou Pierre; and, if so, in what capacity did you act?

Int'y 10. Mention the names of the boats you have known to navigate Bayou Pierre.

Intgy. 11. Do you not know that Bayou Pierre is a navigable stream for steamboats and can be run in by them a portion of every year?

Intgy. 12. Do you not know that steamboats go into Bayou Pierre frequently for cotton and produce and bring the same out whenever there is sufficient quantities of freight and Red river is in boating condition?

Intgy. 13. State anything else you may know to the advantage of the pl'ff.

Intgy. 14. Do you know whether or not a steamboat has ever gone entirely through Bayou Pierre from its source to its mouth, or *vice versa?* If you do, give particulars.

F. G. THATCHER,
J. C. EGAN & SON,
Att'ys for Pl'ff.

Service of above and foregoing interrogatories accepted, affidavit, order, commission, and all formalities waived, and consent that answers be taken by any qualified officer of Red River parish, and proof of his official capacity is waived.

And following cross-interrogatories are propounded, re-
178 serving all legal exceptions and objections to the competency and admissibility of the questions and answers, and especially objecting to interrogatories 11 & 12 as leading:

1st. If you answer that Bayou Pierre is a navigable stream, please state your means of knowledge, the year or years the same was navigated, by what boats and between or up to what landings and at what stages of water at Shreveport.

2nd. Has said bayou ever been navigated, to your personal knowledge, up to Tone's bayou at its junction with Bayou Pierre? If so, give name of boats and years.

3rd. State the highest point on the Bayou Pierre reached by a steamboat in 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, & 1893; give name of boat and your means of knowledge.

LAND & LAND, *Att'ys.*
J. R. LAND, *Dist. Att'y.*

(Endorsed:) Filed Feb. 9, '93. F. A. Leonard, clerk. Filed in evidence in suit No. 4048. "G." March 15, '93. F. A. Leonard, clerk.

Interrogatories.

District Court, Caddo Parish, *Caddo Parish.*

LILLIAN W. EGAN
vs.
A. HART *et als.*
} No. 4048.

Interrogatories to be propounded to A. J. Fortson, of Red River parish, La., a competent and material witness for plaintiff, the answers of which, when taken, are to be used and read in evidence on trial of above numbered and entitled cause.

Intgy. 1st. Please state your name, age, residence, and present occupation, and how long you there resided.

Int. 2. How far do you live from Bayou Pierre?

Int. 3. What do you know about steamboats navigating Bayou Pierre?

179 Int. 4. Do you know whether or not Bayou Pierre is a navigable stream? If so, state whether it is or not.

Int. 5. State what boats you have known to navigate the waters of Bayou Pierre and to what points did they go.

Int. 6. Do you know whether a steamboat has ever gone entirely through Bayou Pierre from its source to its mouth, or *vice versa?* If so, when? Give name of boat and particulars.

J. C. EGAN,
F. G. THATCHER,
Att'ys for Pl'ff.

Service of above interrogatories accepted, citation, affidavit, order, commission, and all formalities waived, and consent given that answers be taken by any officer authorized to administer oaths, and proof of his official capacity is waived, and following cross-interrogatories propounded:

1. Give name and tonnage of steamboats navigating Bayou Pierre and the year in which each navigated the same and at what stage of water and between what points, and state specially whether you answer from personal knowledge or from information or hearsay.

2. If, in answer to 6th direct interrogatory, you state that, to your personal knowledge, a steamboat has gone through Bayou Pierre from its source to its mouth, state where is the source and where the mouth; also give names of boat, master, and year.

3. Have you ever surveyed or followed the course of Bayou Pierre from Hart's island, about three miles below Shreveport, to Tone's bayou? If so, in what year and month? Is it not a fact that the said portion of Bayou Pierre goes dry every summer in many places? Is it not also a fact that a public bridge has been standing across said bayou at Hart's island for many years?

4. Is it not a fact that Tone's bayou is a navigable stream? Is it not a fact that Tone's bayou has more channel depth than Bayou Pierce, in the average?

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LAND & LAND, *Att'ys.*
J. R. LAND, *Dist. Att'y.*

District Court, Caddo Parish, Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*
No. 4048.

Be it remembered that by virtue of the annexed interrogatories, addressed to any person authorized by law to administer oaths, that I, F. J. Pierson, clerk and *ex officio* notary public in and for Red River parish, La., have caused Andrew J. Fortson, of parish and State aforesaid, and witness named in said annexed interrogatories, to appear before me on the 4th day of March, 1892, and first having duly sworn him on the Holy Gospel *do* declare the truth, the whole truth, and nothing but the truth, in reply to the interrogatories propounded to him he made — as follows, viz:

To 1st intgy. he answers: Andrew J. Fortson; 63 years; Grand Bayou, Red River parish, La.; planter, having resided here eight years prior to this time; resided in De Soto parish, on the banks of Bayou Pierre, from 1870 to 1883.

To 2nd direct intgy. he answers: About three miles.

To 3rd " " " " : I kept warehouse on Bayou Pierre, at Gravel point, from 1870 until the railroad was built at Mansfield. Steamboats navigated this bayou whenever the stage of water permitted.

To 4th direct intgy. he answers: Bayou Pierre has always been considered a navigable stream.

To 5th direct intgy. he answers: The "Erie No. 12" ran there regularly for several seasons; the steamer Bossier ran for one season; the Sandy ran there for two or three seasons regularly; the steamer Ida Leon ran there for three or four seasons; one or two other steamers were there, but I do not remember their names; the Dortch made one trip up there in the year 1891.

181 To 6th direct intgy. he answers: Do not know to my own knowledge, but it was generally known that the steamer Rob't T. Lythe went through in the year 1851 or 1852.

1st Cross-intgy: The steamers Erie No. 12, Bossier, and the Dortch were considered about a 1,000 or 1,200 bale boat; the steamers Sandy about 800-bale boat; the Ida Leon about 500-bale boat. These steamers, except the Dortch, run on Bayou Pierre every season when there was water—every season until the building of the T. & P. railway. When Red river was in good navigable condition these steamers could run in Bayou Pierre. These steamers came in the mouth of the Wincey, went as high as Edward's landing, and occasionally as high as Red Bluff (to raft). Knows this to his personal knowledge.

2nd X intgy: I do not know from personal knowledge. See answer to sixth direct intgy.

3rd X intgy. he answers: I have not. I know nothing about that part of Bayou Pierre.

4th X intgy. he answers: I do not know.

A. J. FORTSON.

Said witness, Andrew J. Fortson, having been first by me duly sworn, as above stated, made the above and foregoing answers to the interrogatories propounded, which were reduced to writing by me in the presence of said witness, as dictated by him, and were by said witness subscribed in my presence.

All done on the day and date above written as the date hereof.

F. J. PIERSON,
D'y Clerk and ex Officio Notary Public.

(Endorsed:) Filed March 8, '93. F. A. Leonard, clerk. Filed in evidence in suit 4048. H. March 15, '93. F. A. Leonard, clerk.

The State of Louisiana to any notary public in and for the
182 parish of Orleans, State of Louisiana, or to any judge or justice of the peace in and for the same, or to any other duly commissioned and authorized officer to take testimony in civil cases by commission in and for the same, Greeting:

Know ye that we, reposing full and entire confidence in your integrity and ability, do hereby empower and authorize you to cite and cause to appear before you Walter H. Hoffman, Henry B. Richardson, and F. M. Kerr, witnesses on the part of the defendant in a certain suit now pending in the district court in and for the parish of Caddo, State of Louisiana, numbered 4048, in which Mrs. Lillian W. Egan is plaintiff and Archie Hart *et als.* are defendants, and the answers of said witnesses, under oath, to the annexed inter-

rogatories you shall reduce to writing and cause the said answers to be subscribed by said witnesses, and after having duly certified the same under your hand and private seal you will enclose, with this commission and annexed interrogatories, seal, and direct the same to the clerk of our said court on or before the 1st Monday in March, 1893.

Witness the Honorable S. L. Taylor, judge of our said court, this 7th day of January, A. D. 1893.

F. A. LEONARD, *Clerk.*

Interrogatories.

In 1st Judicial District Court, Parish of Caddo, State of La.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*; STATE OF LOUISIANA, Intervenor. } No. 4048.

Interrogatories to be propounded to Walter H. Hoffman, Henry B. Richardson, and F. M. Kerr, residents of the city of New Orleans and competent and material witnesses for the defendants and intervenor in the above-entitled cause, the answers to which and to such cross-interrogatories as may be propounded will be used as evidence on the trial of said suit.

183 *Interrogatories to Walter H. Hoffman.*

1. State your age, residence, and present occupation.

2. If in answer to foregoing interrogatory you should state that you are secretary of the board of State engineers, please state how long you have occupied such official position.

3. Please examine the documents hereto annexed as follows, viz., printed notice to levee contractors; copy of proposal of A. Hart; copy of recommendation of board of State engineers and of approval of governor; copy of articles of agreement and of argument and special specifications, and copy of contractor's bond of A. Hart and sureties, and state whether or not all of said copies were made by you as secretary of said board and whether or not the same are true and correct copies and exemplifications of the originals on file and of record in your office.

4. State what newspaper is the official journal of the State of Louisiana and whether or not said printed notice is an extract from said official journal and how long the same was advertised therein.

5. Please annex copies of plans and specifications of the levee contracted for by A. Hart and known as the "Bayou Pierre to Dixie levee," if the same are on file and of record in your office.

Interrogatories to Henry B. Richardson and F. M. Kerr.

1st. State your age, residence, and present occupation.

2nd. If you should answer that you are connected with the board of State engineers, please state how long you have been so officially connected in any manner with said board.

3rd. Please examine the printed notice annexed hereto and specially referred to in the interrogatories of Walter H. Hoffman and state what has been your official connection with said levee-work contracted for by A. Hart.

4th. State what connection said levee styled "Bayou Pierre
184 to Dixie" has with the general levee system of Red river south of Shreveport on the Caddo side.

5th. State whether or not the plans or specifications of said work ("Bayou Pierre and Dixie") included the permanent closing of Bayou Pierre by a dam or levee from the highlands below Shreveport across said bayou.

6th. State when and by whom said levee was located and started. State also whether or not the work done up to date by A. Hart, contractor, is in accordance with the location of said levee by the State board.

7th. State in general terms the reasons of the board for recommending the closing of said bayou at the point named, and whether or not the same was necessary, in the opinion of the board, to protect the lands of Red river and Bayou Pierre below Shreveport from overflow.

8th. State what has been the practice and system of the State board since 1879 in the matter of closing outlets on Red river and other navigable streams of the State for the purpose of protecting alluvial lands from overflow, and whether or not the United States engineers have concurred in said practice and system, as also in aid of navigation of said stream.

9th. Since the passage of act 33 of 1879, providing for the general "engineers' fund," what control has the State board of engineers exercised over the dispositions of said funds for the purpose of levee construction?

10th. Since the passage of said act have the district levee boards of the State or any of them exercised any control over the distribution of said funds? If so, give particulars.

11th. State out of what funds the contract price of the levee-work aforesaid awarded to A. Hart is payable, and what connection or control (if any) the Caddo levee board has with or over said
185 work or said funds.

12th. The plaintiff's petition charges in substance that the work of closing said bayou is a private enterprise undertaken by you and A. Hart and others in the interest of private individuals; "that the funds with which to pay for the building of said work were supplied or are to be supplied by interested private parties," and that any pretended contract with the State or its officials is a mere pretext or subterfuge intended as a cloak to cover your illegal acts and designs. Now, what have you to say as to the proof or falsity of these allegations?

13th. What has been the practice and policy of the board in accepting private aid or subscriptions in the construction of public levees where the State funds were insufficient for the purpose?

14th. State what amount of the general engineer fund was at the disposal of the State board for the construction of said "Bayou

Pierre to Dixie levee," and what agreement you or the said board made with A. Hart or others in relation to said work; if in writing, annex the same to your answer.

15th. Please state as near as you can the width and depth of Bayou Pierre from top of bank to bed of stream at the point of closure be said levee.

16th. Please state the same fact with reference to Tone's bayou, at its output from Red river or where it is crossed by the public bridge.

17th. State generally the relative channel capacity of two bayous at or near said point.

18th. State what effect the closing of said Bayou Pierre, as contracted for by said Hart, would have on the navigability of Bayou Pierre below the junction of Tone's bayou?

19th. It is stated substantially by one witness for plaintiff that Tone's bayou feeds "Bayou Pierre" below the junction until
186 the river *guage* at Shreveport stands 19.6 feet above low water, when the flow is re-enforced by waters from upper Bayou Pierre, after which the upper bayou furnishes about $\frac{2}{3}$ and Tone's bayou $\frac{1}{3}$ of the inflow. State what you know of the correctness of such statements, your means of knowledge, and the true facts, if you know them.

20th. Plaintiff, in an amended petition, claims that the closing of the bayou contracted for by Hart will destroy the navigability of said Bayou Pierre. Please state what you know as to the navigability of said stream, and especially its channel capacity from Red Bluff to Jenkin's landing. We refer you to act 96 of 1890, December 5th, which made it the duty of State engineers to make a survey and prepare plans and specifications of the work of improving the channel of Bayou Pierre river from the head of Bayou Wincey to Red Bluff.

21st. State what are the obstructions to navigation in said bayou from Red Bluff to head of Bayou Wincey.

22nd. State the relative difference of channel capacity of Tone's bayou and Bayou Pierre, where the latter has a channel, and whether the former would afford sufficient water for navigation in the latter if its channel were open and unobstructed.

23rd. State any other facts within your knowledge relative to the matters in question about and pertinent to the issues of this case which would be of benefit to either party as if specially interrogated thereon.

LAND & LAND,
Att'ys for A. Hart.
J. R. LAND, *Dist. Att'y,*
For Intervenor and Defendants Richardson and Kerr.

Service of the foregoing interrogatories acknowledged, time waived, and we consent that a commission may issue to any notary or other competent officer in the city of New Orleans, direct-
187 ing him to take the answers of the witnesses to the foregoing interrogatories, said commission to be made returnable in or

before the first Monday of March, A. D. 1893, according to law. All objections as to form of interrogatories and admissibility thereof and of answers thereto reserved.

X interrogatories waived.

F. G. THATCHER,
Att'ys for Pl'ff.

July 6th, 1893.

Deposition- of witnesses produced, sworn, and examined on the days hereinafter stated, at the office of Arthur McGuirk, the undersigned, notary, room 10, 3rd floor Cotton exchange, New Orleans, La., under and by virtue of the annexed commission, issuing out of the first district court in and for the parish of Caddo, State of Louisiana, to take depositions in the cause pending and at issue between Mrs. Lillian W. Egan, plaintiff, and Archie Hart *et als.*, defendants, No. 4048 of the docket of said first district court.

And thereupon WALTER H. HOFFMAN, being first duly sworn on the Holy Bible, on this the 28th day of January, in the year of our Lord 1893, doth depose and say as follows:

1st. To the 1st interrogatory he saith: I am about thirty-eight years old; reside corner of State and Hurst, sixth district, city of New Orleans, La.; secretary of board of State engineers.

2nd. To the second interrogatory he saith: I have been secretary of the board of State engineers since July the 25th, 1888.

3rd. To the 3rd interrogatory he saith: All are true and correct copy of documents on file in the office of the board of State engineers, and were made by me as secretary of said board.

4th. To the 4th interrogatory he saith: The Baton Rouge Daily Advocate is the official journal of the State of Louisiana, and the copy of "Notice to contractors" was clipped from said official journal. Said advertisement appeared in edition of the 14th
188 September, 1892, and for five times thereafter—a total of six times.

5th. To the 5th interrogatory he saith: The annexed blue print, made and filed in answer to this interrogatory, marked "X. Y.," is from tracing of line and profile of levee described in advertisement as "Bayou Pierre to Dixie," original on file in this office.

WALTER H. HOFFMAN.

Sworn to & subscribed before me this 28th day of January, A. D. 1893.

ARTHUR McGUIRK, *Not. Pub.*

HENRY B. RICHARDSON, Esq., being first duly sworn on the Holy Bible on this the 28th day of January, in the year of our Lord 1893, doth depose and say as follows:

1st. To the 1st interrogatory he saith: I am 35 years old; reside in New Orleans, and am at present chief State engineer.

2nd. To the 2nd interrogatory he saith: I have been a member of the State board of engineers since 1877, and chief State engineer since 1880.

3rd. To the 3rd interrogatory he saith: I have concurred with other members of the board of State engineers in recommending the undertaking of the work by the State, have personally examined the ground and the surveys, supervised the making of a contract for the work, and visited it and inspected it during its construction.

4th. To the 4th interrogatory he saith: The "Bayou Pierre to Dixie levee" when completed will form an important part of the levee system on the west or Caddo side of Red river below Shreveport, and will connect the highlands north of Bayou Pierre with the existing line of levees along the west bank of Red river at and below Dixie plantation. The system of levee below Shreveport could not be made complete and effective without the construction of such a line to connect it with the highlands north of Bayou Pierre. The "Bayou Pierre to Dixie" levee will form the head of this system of levees.

189 5th. To the 5th interrogatory he saith: They did.

6th. To the 6th interrogatory he saith: The general line of location for the Bayou Pierre to Dixie levee was determined by the board of State engineers, and its extent and final location was marked on the ground or "staked" on Sept. 17, 1892, by survey party under the immediate direction of Assistant State Engineer F. M. Kerr, a member of the board. The work done by contractor to date has been upon the line thus located by the board of State engineers.

7th. To the 7th interrogatory he saith: The reason for recommending the closing of Bayou Pierre at some point near its head was that it was necessary to do so to prevent overflow of lands on Red river and Bayou Pierre by the water which escapes from Red river through this outlet during floods. The reason determining the exact location of the line of levee at the point where it crosses and closes the bayou were that the soil and foundation appeared favorable there; that a shorter line, requiring less quantity of earthwork, could be carried from that point to a junction with the existing levee at Dixie than from any other point deemed practicable, and that a dike already existed across the old bed of Red river connecting Hart's island with Shreve's island, which could be utilized and made a part of the new line more conveniently by running from that point than from any other place suitable for a crossing of Bayou Pierre.

8th. To the 8th interrogatory he saith: Outlets from Red river and other streams, whether natural bayous or crevasses, have been closed under the general laws relative to levee-building in numerous instances, both by the State and the United States. The work of this nature undertaken by the State have been designed for the protection of alluvial lands from overflow, and those by the United States principally for the improvement of navigation. The

190 reports of the United States engineers in charge of the im-

provement of Red river for many years past show that they have recommended the gradual closure of all outlets from that stream, and similar recommendations are to be found in the published reports of the board of State engineers.

9th. To the 9th interrogatory he saith: The provisions of this act require the governor to expend the general engineer fund under contracts to be made by him for works recommended by the board of State engineers, and payments from the fund to be made upon certificate of the State engineer, approved by the governor, and the fund has been expended on the recommendation of the State board.

10th. To the 10th interrogatory he saith: With the following exceptions the district levee board of the State have never exercised or been authorized to exercise any control over the disposition of the general engineer fund, viz: (1) Act No. 59 of 1886 required the taxes, according to the general engineer fund, to be placed to the credit of the Tensas Basin levee district, to be administered by its commissioners, and act No. 60 of the same year that ten per cent. of the money accruing to the fund should be set aside annually for the Tensas Basin levee district "in lieu of the amount" to be received by it under act 59; (2) act No. 102 of 1892 provides that for the year 1892 and subsequent years the sum of $10,000 shall be paid to the board of commissioners of the Orleans levee district, to be expended by them.

11th. To the 11th intgy. he saith: Out of that part of the general engineer fund (9½ per cent.) required under the provisions of act No. 102 of 1892, amending act No. 60 of 1886, to be "set aside for and expended annually in such portions of the subdistricts of Caddo, Bossier, Red River, and De Soto and part of Natchitoches north of township 9 and 10 north, of either of them, in whole or part, as may be determined by the board of State engineers,"
191 this portion of the general engineer fund being known as and described in the auditor's and treasurer's offices as the Caddo subdistrict levee fund."

The Caddo levee board had no control over this fund or over any work done with it until completed.

12th. To the twelfth intgy. he saith: I have to say that they are totally and unqualifiedly false. The closing of Bayou Pierre by the construction of the Bayou Pierre to Dixie levee is a public work, authorized by law, and has been undertaken by the State of Louisiana in the public interest. The funds to be paid by the State for doing the work are supplied by public taxation. The contract was entered into between the State and A. Hart in the usual and lawful manner for making such contracts, and the articles of agreement were signed by his excellency the governor.

13th. To the 13th interrogatory he saith: Private subscriptions have never been received by the board of State engineers for the construction of levees, but the board has always encouraged and facilitated, so far as was possible, the undertaking of work on the public levees by parties whose interests prompted them to do the work at smaller prices than such work is commonly done for by

contractors having no other interest in them than the profit to be made by the work itself.

14th. To the 14th interrogatory he saith: Four thousand dollars of the general engineer fund was considered available for this work. Hart and others in reply to inquiries were verbally informed by myself and Mr. Kerr previous to the advertisement for proposals to build the work that not more than $4,000 could be applied to it by the State, and that it would require upwards of 80,000 cubic yards of earth-work for its construction, and that as this would require the work to be done, if at all, at the very low price of five
192 cents or less per cubic yard, or probably less than the actual cost under the most favorable circumstances, it was hardly considered worth while to advertise for proposals. The parties (Hart and others) after some deliberation told us that if the work were advertised a bid would be received to complete it at a cost not to exceed $4,000. We then and because of the assurance thus given decided to recommend that proposals be advertised for at once, which was accordingly done. This was the only conference or agreement between the board of State engineers or any of the members and A. Hart and others in relation to said work.

15th. To the 15th interrogatory he saith: Bayou Pierre, where the levee crosses, is about 225 feet wide between top of banks, and the greatest depth from top of banks to bottom of bayou is about 25 feet.

16th. To the 16th interrogatory he saith: Tone's bayou, near its output from Red river, was about 300 feet wide, with an extreme depth of about 35 feet, five or six years ago. I have no recent measurements.

17th. To the 17th interrogatory he saith: The "channel capacity" of Tone's bayou is probably two or three times greater than that of the upper end of Bayou Pierre.

18th. To the 18th interrogatory he saith: In my judgment, none whatever.

19th. To the 19th interrogatory he saith: I have no sufficient measurements or observations to justify me in either corroborating or discrediting these statements.

20th. To the 20th interrogatory he saith: The upper part of Bayou Pierre was never considered a navigable stream, and the attempts to navigate the lower portion have not met with much success. The size and capacity of the channel are varying and intermittent. In some places there is practically no channel.

21st. To the 21st interrogatory he saith: The bayou from
193 Red Bluff to Bayou Wincey is in many places filled with raft and timber and its waters sometimes dispersed and lost on either side and its channel nearly or quite obliterated. It is also obstructed in parts of its course by small islands, by shoals, and numerous rapids with hard bottom. But none of the difficulties of navigation during flood stages of Red river are due to insufficiency of water supplied from that stream.

22nd. To the 22nd interrogatory he saith: Where Bayou Pierre has any channel at all it is some places larger than that of Tone's

bayou, but more frequently smaller. Tone's bayou during high stages of Red river would afford sufficient water for the navigation of Bayou Pierre if the latter could be made navigable at all.

23rd. To the 23rd interrogatory he saith: No other facts occur to me that would be of benefit to plaintiff in this case, though it may be important to defendants to state the fact that both act No. 74 and act No. 79 of 1892 contain the following language regarding the board of engineers, viz: "They are especially authorized to cause to be closed by levees, dikes, or otherwise such outlets, bayous, or sloughs, or to open the same, as in their judgment may be necessary," the same power that had been exercised when they deemed it necessary before the passage of that act.

HENRY B. RICHARDSON.

Sworn to & subscribed before me this 28th day of January, A. D. 1893.

ARTHUR McGUIRK, *Not. Pub.*

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*
No. 4048.

Answers to Interrogatories Propounded to F. M. Kerr, Esq.

FRANK M. KERR, Esq., being first duly sworn on the Holy Bible to tell the truth, the whole truth, and nothing but the truth,
194 deposes and says on this 28th January, 1893:

1st. (*a*) Forty years old; (*b*) New Orleans, La.; (*c*) assistant State engineer.

In answer to second interrogatory he says:

2nd. Draughtsman from 1877 to 1882; secretary from 1882 to 1888; assistant State engineer and member of the board of State engineers from 1888 to date.

In answer to third interrogatory he says:

3rd. Consulted in regard to the ability of the State to undertake the work; party to the recommendation of the board of State engineers to the governor of the State that the work shall be undertaken, if possible; present at an informal meeting when A. Hart and others gave an assurance that a proposal to construct the *sum* within the available means of the State would be submitted if the work were advertised; located the line in accordance with the general views of the board of State engineers; directed and supervised the necessary detailed surveys, prescribed grades and sections, and visited and inspected the work while in progress.

In answer to the fourth interrogatory he says:

4th. When completed it will constitute the head of the system on the right descending bank of Red river below Shreveport, connecting the bluffs with the existing line of public levees below at Dixie plantation, without which connection the system of levees on the right bank of Red river, below Shreveport, would never be made complete.

In answer to fifth interrogatory he says:

5th. They did.

In answer to sixth interrogatory he says:

6th. (*a*) The line was located in accordance with the views of the board of State engineers and staked by a survey party under my direction and supervision; (*b*) the earth-work so far placed in position is upon the line so staked and located.

195 In answer to seventh interrogatory he says:

7th. (*a*) — of construction, permanence of line, and cost of work; (*b*) in the opinion of the board of State engineers the work is necessary to insure protection from overflow to the lands on Red river and Bayou Pierre below Shreveport.

In answer to eighth interrogatory he says:

8th. (*a*) The practice and system of the State board of engineers has been to recommend the construction of levees wherever necessary to perfect the system and accomplish the purposes for which the laws were instituted and the means provided, whether the lines lead to the closing of natural outlets or crevasses or simply occupied natural banks; (*b*) this practice and system has been and continues to be concurred in by the U. S. engineers in aid of the improvement in navigation of streams.

In answer to ninth interrogatory he says:

9th. Except in the case of the Tensas Basin levee district and the Orleans levee district and a few specific and direct appropriations made by the General Assembly, the general engineer fund has always been and continues to be expended under contracts entered into by the governor, by the State of Louisiana, for levee-work recommended for construction by the board of State engineers.

In answer to 10th interrogatory he says:

10th. No; except in cases above cited, under the provisions of acts 59 & 60 of 1886, and act 102 of 1892.

In answer to 11th interrogatory he says:

11th. (*a*) The contract price of the levee-work awarded to A. Hart, known as "the Bayou Pierre to Dixie levee," is payable from that part of the general engineer fund required by law to be set aside and expended annually in the subdistricts of Caddo, Bossier, Red River, and De Soto, and part of Natchitoches, and styled, for convenience sake, as the "Caddo subdistrict levee fund" in the

196 offices of the auditor and treasurer of the State; (*b*) the Caddo levee board has no connection with or control over said work or fund.

In answer to twelfth interrogatory he says:

12th. The allegations are one and all false in every particular.

In answer to 13th interrogatory he says:

13th. It has never been the practice or policy of the State board of engineers to accept private aid or subscriptions in the construction of public levees, but in a few cases where levee-work has been petitioned for, found advisable and necessary, and the means at the disposal of the State were insufficient to secure its construction at current prices, the work has been recommended and adver-

tised upon the representations of responsible parties that a proposal, within the limit of the amount available, would be submitted.

In answer to 14th interrogatory he says:

14th. (*a*) The amount of the general engineer fund, or at least of that part of it known as the "Caddo subdistrict levee fund," at the disposal of the State for the construction of the "Bayou Pierre to Dixie" levee, was estimated to be about four thousand ($4,000) dollars; (*b*) no agreement in the premises was made by the board of State engineers or by me with A. Hart other than those set forth in the public contract on file, and of which a copy is before you.

In answer to 15th interrogatory he says:

15th. About two hundred and twenty-five (225) feet between top of banks, with an extreme depth of about twenty-five (25) feet from top of bank to bottom of stream.

In answer to 16th interrogatory he says:

16th. About three hundred and fifty (350) and thirty (30) feet respectively.

In answer to seventeenth interrogatory he says:

197 17th. The relative channel capacity of the two streams at the points indicated must be as two or three to one in favor of Tone's bayou.

In answer to eighteenth interrogatory he says:

18th. The effect of closing said Bayou Pierre as contracted for upon the navigability of Bayou Pierre below the junction of Tone's bayou would in my opinion be inappreciable.

In answer to 19th interrogatory he says:

19th. I know nothing in regard to the correctness of the statement, but, from a general knowledge of the conditions, question it.

In answer to 20th interrogatory he says:

20th. (*a*) Bayou Pierre is only navigable to a limited extent and principally during periods of high water in Red River from the head of the lakes to Bayou Wincey, through which it thence finds access to Red river; (*b*) its channel capacity from Red Bluffs to Jenkin's is so variable and uncertain that it could not be expressed even in approximate terms without the aid of an exhaustive survey, which is not at hand, and the consideration of recent local conditions with which I am not at present familiar; (*c*) the board of State engineers was not called upon for the survey referred to, and none has in consequence been made. An inspection, however, was made by me from the mouth of Bayou Wincey to Williamsburg in August, 1890, in company with members of the board of commissioners appointed to carry out the objects of act No. 96 of 1890, at which time the bayou, for the length inspected, presented conditions altogether discouraging, to say the least, to the navigation of even a skiff.

In answer to 21st interrogatory he says:

21st. The obstructions to navigation in Bayou Pierre from Red Bluff to the head of Bayou Wincey are, as you descend, flat lakes, timber, and vegetable growth, islands, bars, snags, and hard ledges, traversing the stream at intervals, which at most stages of

198 the water in the bayou form rapids and falls.

In answer to 22nd interrogatory he says:

22nd. The relative channel capacity of Tone's bayou and Bayou Pierre, where the latter has a channel, may be somewhat in favor of Bayou Pierre; but Tone's bayou would, in my opinion, afford all the water necessary for any navigation possible under the other conditions maintaining in Bayou Pierre.

In answer to 23rd interrogatory he says:

23rd. Nothing further presents itself to me at this time that would be of any special benefit in the premises.

F. M. KERR.

Sworn to & subscribed before me this 28th January, A. D. 1893.

ARTHUR McGUIRK, *Not. Pub.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

I, Arthur McGuirk, the undersigned notary public in and for the parish of Orleans, do certify that I caused Walter H. Hoffman, Henry B. Richardson, and F. M. Kerr, witnesses hereinbefore named and examined, to appear before me at the time and place named above, and, after publicly and solemnly swearing each separately to tell the truth, the whole truth, and nothing but the truth in answer to the annexed interrogatories, I then and there proceeded to examine each separately by propounding to him the said interrogatories and causing his answers to be reduced to writing by the hand of A. L. Cartier, Esq., of this city, a third party not interested in this suit, my clerk, in my presence and that of the witness; which answers when so transcribed were read over and sworn to and subscribed by the said witness before me, as stated herein and as now returned herewith.

In testimony whereof I have hereunto set my hand and seal
199 on this the 28th day of January, A. D. 1893.

ARTHUR McGUIRK, *Not. Pub.*

Fee, $25, paid by A. Hart, defendant.

ARTHUR McGUIRK.

Notice to Levee Contractors.

EXECUTIVE DEPARTMENT, STATE OF LOUISIANA,
BATON ROUGE, *September* 9, 1892.

Sealed proposals will be received at the office of the board of State engineers, in New Orleans, La., up to 12 o'clock noon, Tuesday, September 20th, 1892, for the construction of the following-named levees:

Name of levee.	Parish.	Bond required.	Deposit required.
Klotzville	Assumption	$1,150	$130
Napoleonville	Assumption	350	70
Napoleonville to Lanaux	Assumption	2,500	200
Bayou Pierre to Dixie	Caddo	4,000	275

Proposals for the above-named work must be separate and each proposal must be signed by the person making the same and sealed in its own envelope. The envelope must be endorsed "Proposals to build —— levee, parish of ——," giving name of levee and parish and of person making proposal. A deposit of current money is required for each levee to the amount as above stated, which should be enclosed in the sealed envelope, said deposit to be forfeited to the State of Louisiana in case the person to whom the work may be awarded shall fail to sign articles of agreement and complete bond within forty-eight (48) hours after notice of adjudication.

Bond will be required in the sum above named with two (2) sureties, who will be required to make oath that they are each worth over and above liabilities and exemptions the amount of bond.

200 Checks, drafts, or warrants will not be received as deposits.

The right to reject any or all proposals is reserved.

As provided in joint resolution No. 23, approved June 19th, 1890, notice is hereby given that it is "specifically required that all stumps, trees, logs, roots, and other matter susceptible of decay shall be removed from the base of the levee."

Other information as to location and character of work and terms of payment, as also blanks, forms of proposals, may be obtained at the office of board of State engineers.

MURPHY J. FOSTER,
Governor of Louisiana.

By direction of the governor:

WALTER H. HOFFMAN,
Secretary of Board of State Engineers.

Bid of A. Hart.

NEW ORLEANS, *September 20th*, 1892.

To his excellency Murphy J. Foster, governor of Louisiana:

I hereby propose to construct the work described as Bayou Pierre to Dixie, in the parish of Caddo, according to plans, specifications, and directions of the board of State engineers for the sum and price of four thousand (4,000) dollars, payable in such obligations as are provided for in sec. 4 of art. No. 33, session of 1879.

I enclose herewith two hundred and seventy-five ($275) dollars as a deposit, subject to the terms of the advertisement in the official journal dated Sept. 9th, 1892.

Respectfully, A. HART.

Please address all communications to me at Shreveport, La.

A true copy.

WALTER H. HOFFMAN,
Sec'y Board of State Engineers.

201 *Report on Bids.*

State of Louisiana, office board of State engineers, room No. 2, fourth floor, New Orleans cotton exchange.

(Copy.)

NEW ORLEANS, LA., *Sept. 20th*, 1892.

To his excellency Murphy J. Foster, governor of Louisiana.

SIR: According to "notice to levee contractors," dated September 9th, 1892, duly advertised in the official journal of the State, and your instructions, the board of State engineers proceeded to open, at noon today, the several proposals received, with the following results:

	P. Harman.	Andrews Bros. Con. Co.	A. Hart.	M. Dupaty.	J. N. Ogden.	P. J. Terrell.	Recommended for acceptance the bid of—
Klotzville.....	24	21	.....	....	14.94	17.99	J. N. Ogden of 14.94 per cu. yd. for Klotzville levee.
Napoleonville....	45	. .	.....	17	.....	.....	M. Dupaty of .17 per cu. yd. for Napoleonville levee.
Napoleonville to Lanaux.	23	19.93	.....	...	16.95	17.99	J. N. Ogden of 16.95 per cub. yd. for Napoleonville to Lanaux levee.
Bayou Pierre to Dixie.	.....	.....	$4,000	.....	.....	... .	A. Hart of $4,000 for Bayou Pierre to Dixie levee.

202 Very respectfully,

THE BOARD OF STATE ENGINEERS,

Per (signed) HENRY B. RICHARDSON,

Chief State Engineer.

The above recommendations of the board of State engineers are hereby approved.

(Signed) MURPHY J. FOSTER,

Governor of Louisiana.

A true copy.

WALTER H. HOFFMAN,

Sec'y Board of State Engineers.

F. M. KERR.
HENRY B. RICHARDSON.
WALTER H. HOFFMAN.

"*Ne varietur.*"

ARTHUR McGUIRK, *Not. Pub.*

Agreement and Contract—State and A. Hart.

Form A, 7–90.

Articles of agreement made and entered into at New Orleans, Louisiana, this 20th day of September A. D. eighteen hundred and ninety-two between the State of Louisiana, by Murphy J. Foster, the governor thereof, and A. Hart, contractor:

Witnesseth, that for and in consideration of the payments hereinbelow provided for, to be made by the State of Louisiana, the said contractor agrees and binds himself to construct and complete in a thorough and workmanlike manner, to the satisfaction of the board of State engineers of said State of Louisiana, all that levee known and described upon the plans, notes, etc., of said board as the Bayou Pierre to Dixie levee, in the parish of Caddo; all to be done according to the following general specifications and conditions:

1st. The work shall be commenced on or before the first
203 day of October, 1892, and completed before first day of January, 1893.

2nd. The work shall be done under the direction and supervision of the engineer of the State in charge, whose directions shall be complied with, and of such local inspectors as may be appointed by the board of State engineers; and all cases of difference shall be decided by the said board of State engineers, whose decisions shall be final. They shall have the right to condemn all work not in accordance with the spirit or text of this agreement, or which shall not be in accordance with the dimensions, locations and methods of construction prescribed by them, or provided in these specifications.

3rd. The contractor takes all risks from accidents, floods and casualties of every kind which may occur before the completion and acceptance of the work, and shall sustain all damage and injury that may be caused thereby.

4th. No part of the work herein contracted for shall be subcontracted, without the consent of the governor of the State of Louisiana, expressed in writing; nor shall said contractor or his sureties be released from personal and immediate responsibility without like consent.

5th. The levee shall be built from such material, and disposed and distributed in such manner as the engineer in charge shall direct, under the requirements of the board of State engineers—the required allowance for settling being added, this allowance to be at the discretion of the engineer in charge, up to one-fifth to the whole height of the levee; it being understood that a cubic yard of embankment under this agreement is a net cubic yard of settled earth, and equal to five-sixths of a gross yard of loose earth.

6th. The contractor shall remove all trees, stumps, logs, roots, stalks, weeds, grass, trash and perishable matter of every kind not specially dispensed with in instructions, and plow or spade up
204 the ground over the entire surface to be covered by the embankment. He shall cut a muck ditch of such size and

depth as may be prescribed by the engineer. He shall grub up by the roots all trees and stumps coming within the base of the levee and three (3) feet on either side of the base. He shall remove all buried logs, brick or walls, and other material considered unsuitable by the engineer in charge. All cross-ditches shall be carefully cleaned and filled with solid earth up to the height of the adjacent natural surface to a distance of twenty (20) feet from the base of the levee on the land side and to the width of the berme on the river side. If required by the engineer in charge, the clearing, grubbing, preparation of base and cutting of muck ditch as above shall be completed, and muck ditch refilled throughout the whole length of levee, before the embankment is begun. In the construction of the levee he shall use earth only, except where other material may be ordered by the engineer in charge, and shall obtain it from the river side of the embankment except by written permission of the engineer in charge, leaving a berme of the natural surface fifteen (15) feet wide between the barrow pits and the base of the levee. All existing levees or parts of old levee must be left undisturbed, except by special permission of the engineer in charge. He shall cut such openings through the old levee as may be required by the engineer in charge. He shall dig a drainage ditch on the land side of the levee, if required by the engineer in charge, of such dimensions and at such distances at the base, as may be prescribed, but may not otherwise break up the surface of the ground on the land side of the levee, except by written permission of the engineer in charge. He shall plant the entire surface of the completed levee with living roots or sods of Bermuda grass, not more than two feet apart and to the satisfaction of the engineer in charge.

205 7th. Should the engineer in charge deem any changes necessary in the extent or location of the levee, or the grade line, dimensions or quantity of work required, such change shall be made by the contractor at the same rate of compensation as hereinafter stipulated. Should differences arise between the contractor and engineer in charge, the decision of the board of State engineers shall be final and binding upon the parties. The contractor, shall, under no circumstances, have the right to increase or diminish the work in his contract. No claim for extra work will be allowed unless done by written order of the engineer in charge and properly certified by him.

8th. When the work is completed to the satisfaction of the State engineer and upon final measurement and his approval, he shall certify same to the governor of the State of Louisiana, and a certificate of payment, shall be paid as hereinafter specified, and a final release signed by both parties to this contract, if required by either party; provided, however that no release so signed shall operate to release either the contractor or his sureties from liability for any fraud in the construction or in obtaining payment during this contract, or for the payment of laborers, or workmen employed by him upon the work.

9th. Should the contractor fail to prosecute the work under this contract with the vigor necessary to its completion, within the time

stipulated, in the opinion of the engineer in charge, all estimates may be withheld, and it shall be competent for and the duty of said engineer to employ such additional force as he may deem necessary at the expense of the contractor. Should it become necessary, in the judgment of said engineer, to suspend this contract, or to declare it vacated or annulled, for negligence, inefficiency or abandonment by contractor, he may proceed to do so, and all sums
206 unpaid to said contractor by the State of Louisiana, shall be forfeited—the award of the board of State engineers to be final as to the cause of action on the part of the engineer in charge. Should damage accrue to the State of Louisiana or to those to be protected by the levee from such laches, or from abandonment of the work the contractor and his sureties shall be responsible for such amounts as shall be awarded by the courts. A contract vacated or annulled, as above described, may be relet by the governor of Louisiana, to other contractor without advertisement or other formality.

10th. The said State of Louisiana engages to pay said contractor, in such obligations as are provided for in section 4, of act No. 33, session of 1879, Caddo levee district fund, a full and final payment of four thousand ($4,000) dollars, the total number of net cubic yards of earth contained in the levee and actually measured by the engineer in charge, at the completion of the work. Said payment to be in full for all clearing, grubbing, planting of grass, etc., required by these specifications, and for all drainage, protection, or other auxiliary works that may be necessary for the completion of the said Bayou Pierre to Dixie levee, except for such extra work as may have been ordered by the engineer in charge.

11th. The word "contractor" wherever it occurs in these articles of agreement refers exclusively to said A. Hart.

In witness whereof, the governor of the State of Louisiana has hereunto subscribed his name, and the chief State engineer has countersigned it and affixed to it the seal of the board of State engineers, together with A. Hart the said contractor, and R. E. Harris and T. E. Raymond, competent witnesses, this the 20th day of September, 1892.

(Signed) A. HART, *Contractor.*
(Signed) MURPHY J. FOSTER,
Governor of the State of La.

Witnesses:
(Signed) THOS. E. RAYMOND.
(Signed) R'B'T E. HARRIS.
207 (Signed) HENRY B. RICHARDSON,
Chief State Engineer.

Contractor's Bond.

Know all men by this instrument, that we, A. Hart as principal, and R. K. Colquitt and E. M. Smith sureties, of the State of Louisiana, are held and firmly bound unto the State of Louisiana in the full sum of four thousand ($4,000) dollars, payable in lawful money

of the United States: and to this bond we obligate our heirs, successors and assigns.

Now, the condition of this bond is such, that if the said A. Hart, contractor, shall well and truly perform said contract, made and entered into this 20th day of September, 1892, to construct the Bayou Pierre to Dixie levee, in the parish of Caddo, according to the stipulations therein recited, and shall pay all sums due to laborers and workmen employed upon the works to be done, then, and in that case, this bond shall be null and void; otherwise to remain in full force and virtue, to the cancelling of all damages accruing to the State and to the parties to be protected by the said work.

And we, the said sureties, R. K. Colquitt and E. M. Smith, do specially depose upon oath, that we are personally worth, over and above all obligations, and exemptions outstanding against us, an amount of real estate in the State of Louisiana exceeding the sum specified as bond money in this obligation.

In faith whereof, we have subscribed this obligation, at New Orleans, La., this 20th day of Sep., A. D. 1892.

(Signed) A. HART.
(Signed) R. K. COLQUITT.
(Signed) E. M. SMITH.

Witnesses to signature of E. M. Smith:
M. KAUFMAN.
C. S. ROBERTSHAW.

Witnesses in so far as A. Hart and R. K. Colquitt are concerned:
AUG. HUARD.
J. LOMBARD.

STATE OF LOUISIANA, }
Parish of Orleans. }

208 I, R. K. Colquitt, one of the sureties named in the above bond, solemnly swear that I am pecuniarily worth the sum of four thousand ($4,000) dollars over and above all my debts, liabilities, and exemptions by law.

(Signed) R. K. COLQUITT.

[L. S.] Sworn to and subscribed before me this 20th day of September, 1892.

(Signed) MICHEL V. DEJAN, *Not. Pub.*

STATE OF LOUISIANA, }
Parish of Caddo. }

I, E. M. Smith, one of the sureties named in the above bond, do solemnly swear that I am pecuniarily worth the sum of four thousand ($4,000) dollars over and above all my debts, liabilities, and exemptions by law.

(Signed) E. M. SMITH.

[L. S.] Sworn to and subscribed before me this 20th day of September, 1892.

(Signed) T. ALEXANDER, *Not. Pub.*

(Endorsed:) Filed M'ch 1, '93. F. A. Leonard, clerk. Filed in evidence in 4048. "I." M'ch 15, '93. F. A. Leonard, clerk.

The State of Louisiana to P. B. Frierson or any notary public of the parish of De Soto, State of Louisiana, or to any judge or justice of the peace in and for the same, or to any other duly commissioned and duly authorized officer to take testimony in civil cases by commission in and for the same, Greeting:

Know ye that we, reposing full and entire confidence in your integrity and ability, do hereby empower and authorize you to cite and cause to appear before you S. J. Frierson, witness on the part of the pl'ff, in a certain suit now pending in the district court
209 in and for the parish of Caddo, State of Louisiana, numbered 4048, in which Mrs. Lillian W. Egan & husband are plaintiffs and Archie Hart *et als.* are defendants, and the answers of said witness, under oath, to the annexed interrogatories you shall reduce to writing and cause the said answers to be subscribed by said witness, and after having duly certified the same under your hand and private seal you will inclose, with this commission and annexed interrogatories, seal, and direct the same to the clerk of our said court on or before the second Monday in March, 1893.

Witness the Honorable S. L. Taylor, judge of our said court, this 4th day of March, A. D. 1893.

F. A. LEONARD, *Clerk.*

Interrogatories.

District Court, Caddo Parish, Louisiana.

LILLIAN W. EGAN
vs.
A. HART *et als.* } No. 4048.

Interrogatories to be propounded to Sainte J. Frierson, a resident of De Soto parish, Louisiana, and a competent and material witness on behalf of plaintiff in above numbered and entitled suit, the answer- to which, when taken, are to be used and read in evidence on the trial of same cause.

Interrogatory first. Please state your age, residence, and present occupation, and how long have you lived in the parish where you are now residing.

Int. 2nd. How far do you live from Bayou Pierre?

Int. 3rd. Do you know whether or not Bayou Pierre is a navigable stream? If so, state whether or not it is.

Int. 4th. What do you know about steamboats navigating
210 Bayou Pierre? State fully.

Int. 5th. Have you known steamboats to take freight up

said bayou and bring out cotton and produce; if so, how far up said bayou did said boats go, from what point to what point, and when? Please state fully.

Int. 6th. Have you ever done any work or had work done at your instance in Bayou Pierre in improving the navigation of said bayou; if so, when, in what capacity, how did you come to do it, and what was done and in what did it result? Please state fully.

Int. 7th. What is the length of Bayou Pierre from the point where it lets out from Red river near Shreveport to its confluence with Bayou Wincey and what the length of Bayou Wincey from its junction with Bayou Pierre to its entry into Red river?

Int. 8th. What is the length of Bayou Pierre from the point where it lets out from Red river to its junction with Tone's bayou?

Int. 9th. Have you ever known a steamboat to traverse or go the entire length of Bayou Pierre from its junction with Bayou Wincey or from Red river at Grand Ecore to its source or to the point where it lets out from Red river; if so, when, and what boat?

Int. 10th. If you answer no to the last interrogatory, please state what is the highest point up said Bayou Pierre from Bayou Wincey that you have known steamboats to go to and what is its distance from Bayou Wincey where it joins with Bayou Pierre.

Int. 11th. Do you know the following-named points or places, to wit, Cornisheau lake, Greening's ferry, Grand point, Frierson's landing, Jenkin's landing, Gravel point, Red Bluff, Williams' landing? Are they points on Bayou Pierre? If so, please state the distance of each from Red river through to Bayou Wincey and Bayou Pierre.

Int. 12th. What is the character of the stream Bayou Pierre from its junction with Tone's bayou to its source or to the point
211 where it lets out from Red river near Shreveport?

Int. 13th. At what stage of the water in Red river near Shreveport does Bayou Pierre become navigable?

Int. 14th. When Bayou Pierre is navigable what proportion of the water in Bayou Pierre below the junction of Tone's bayou with it flows through Tone's bayou, and what proportion through Bayou Pierre above that junction? In other words, taking Bayou Pierre below its junction with Tone's bayou as a stream fed by Tone's bayou and the continuation of Bayou Pierre to its source to the point where it lets out of Red river, then what proportion of the stream below said junction is fed by Tone's bayou and what proportion is fed by the said continuation of Bayou Pierre?

Int. 15th. What is the entire length of Bayou Pierre from its source, on Red river near Shreveport, to its junction with Bayou Wincey? What is the length of Bayou Wincey from its junction with Bayou Pierre to its outlet into Red river?

Int. 16th. What is the length of Tone's bayou?

Int. 17th. State any other facts within your knowledge showing the navigability of Bayou Pierre as fully as though specially interrogated thereto.

J. C. EGAN,
F. G. THATCHER,
Att'ys for Pl'ff.

18—320

Service of above and foregoing interrogatories accepted, citation and time, affidavit, order, commission, and all formalities waived, and consent given that answers be taken by any qualified officer, and proof of his capacity is waived and following cross-interrogatories propounded:

FEBRUARY 28TH, 1893.

1st. Give names and tonnage of steamboats navigating Bayou Pierre and the years in which each navigated same and at what stage of water, and state whether you answer from personal knowledge or from information and hearing.

212 2nd. If you should answer that a steamboat, within your knowledge, has passed through that part of Bayou Pierre extending from Tone's bayou to Red river a few miles below Shreveport, give names of boat, year, and your means of knowledge.

3rd. How long has the public bridge over or across Bayou Pierre at Hart island about three miles below Shreveport been existing?

4th. Have you ever made a formal survey of the bayou from its source to Tone's bayou? If so, when?

5th. How or by what means can you estimate the comparative flow of water from Tone's bayou and upper Bayou Pierre into lower Bayou Pierre? Is it not a fact that upper Bayou Pierre—*i. e.*, above Hart's island—goes dry in many places every summer? Is it not also a fact that all outlets on west side of Red river from Shreveport to Tone's bayou flows into Bayou Pierre directly or indirectly?

LAND & LAND, *Att'ys.*
J. R. LAND, *Dist. Att'y.*

STATE OF LOUISIANA, }
Parish of De Soto. }

Deposition of witness produced, sworn, and examined on the day hereinafter stated, at my office, at Frierson's Mills, in the State and parish above mentioned, under and by virtue of the annexed commission issued out of the district court for the parish of Caddo, State of Louisiana, to the depositions in a certain cause now pending and at issue between Mrs. Lillian W. Egan and husband, plaintiffs, *vs.* Archie Hart *et als.*, defendants.

ST. JULIAN FRIERSON, being first duly sworn on the Bible on this the 7th day of March, A. D. 1893, doth depose and say as follows:

First. To the 1st interrogatory he saith: I am 52 years old and have lived in this parish for 40 years except 4 years spent

213 in Central America immediately after the war. I am farming and merchandizing.

Second. To the 2nd interrogatory he saith: I live five miles from Red Bluff on Bayou Pierre.

Third. To the third interrogatory he saith: I know that only the lower part of the Bayou Pierre is navigable.

Fourth. To the 4th interrogatory he saith: Before and during the war steamboats frequently came to Red Bluff via Tone's bayou, but owing to raft formation in Bayou Pierre in 1866 (commencing just below Red Bluff), and which has been added to ever since, I

know that no steamboat has ever (or will ever again) navigate this part of said bayou.

Fifth. To the 5th interrogatory he saith: The above remarks cover this question.

Sixth. To the 6th interrogatory he saith: I have had work done, and am still working at same, with a view of opening up a channel around rafts in Bayou Pierre below Red Bluff, hoping eventually to open a good channel through lower part of said bayou from Red Bluff to Bayou Wincey, one object being the drainage of Bayou Pierre and reclamation of low lands.

Seventh. To the 7th interrogatory he saith: I will respectfully refer you to Vance's survey of those streams.

Eighth. To the 8th interrogatory he saith: I do not know, but the above-mentioned survey will inform you.

Ninth. To the 9th interrogatory he saith: About 1860 the steamer "Sun Beam" undertook to make this trip via Tone's bayou, but was sunk by a snag somewhere below here.

Tenth. To the 10th interrogatory he saith: The steamer "Dortch" came up last year as high as Gravel point (4 miles below Red Bluff). Allow me to refer you again to the Vance survey.

Eleventh. To the 11th interrogatory he saith: Jenkin's
214 landing is the first on Bayou Pierre and about one mile above the conjunction of the streams; Greening's ferry is about 3 miles above; Williams' landing about 5 miles above; West point some 10 miles, and Gravel point about 12 miles above, and so far is at head of navigation.

Twelfth. To the 12th interrogatory he saith: I do not know anything about the upper part of old Bayou Pierre, but I do know that the lower part of same is all choked up with raft, and, where it empties into Tone's bayou, is all covered over with sand and used as wagon road, and never at any time has it ever been considered a navigable stream.

Thirteenth. To the 13th interrogatory he saith: When the water is twenty-five (25) feet on the *guage* at Shreveport, Bayou Pierre becomes navigable as high up as Gravel point.

Fourteenth. To the 14th interrogatory he saith: I think that all the water flows through Tone's bayou, old Bayou Pierre being choked up with solid raft.

Fifteenth. To the 15th interrogatory he saith: Will again refer you to Vance's survey, as I cannot answer correctly.

Sixteenth. To the 16th interrogatory he saith: About 4 or 5 miles.

Seventeenth. To the 17th interrogatory he saith: Just below Tone's bayou the Bayou Pierre is choked up with solid raft for at least 4 miles, and from that point on down to Red Bluff (a distance of 4 miles) there are two or three patches of floating raft some two or three hundred yards in length, and just below Red Bluff there is about ¾ mile of floating raft.

To the cross-interrogatories he answered as follows, to wit:

First. To the 1st cross-interrogatory he saith: I cannot give any correct answer to this.

Second. To the 2nd cross-interrogatory he saith: I am
215 satisfied that a steamboat never did and never will pass through that route.

Third. To the 3rd cross-interrogatory he saith: I do not know.

Fourth. To the 4th cross-interrogatory he saith: No.

Fifth. To the 5th cross-interrogatory he saith: The mouth of old Bayou Pierre being closed up with solid raft, all the water that passes through lower Bayou Pierre is bound to come through Tone's bayou.

Sixth. To the 6th cross-interrogatory he saith: It is.

Seventh. To the 7th cross-interrogatory he saith: All the water comes into lower Bayou Pierre at or just above Red Bluff.

S. J. FRIERSON.

Sworn to & subscribed before me on this the 8th day of March, 1893.

P. B. FRIERSON, *Not. Pub.*

I, Phillip B. Frierson, notary public in and for the parish of De Soto, do certify that I caused St. J. Frierson, witness hereinbefore named and examined, to appear before me at the time and place before named, and after swearing him to tell the truth, the whole truth, and nothing but the truth in answer to the annexed direct and cross interrogatories I then and there proceeded to examine him by propounding to him the said direct and cross interrogatories, and reducing in my presence and that of the witness, with my own hands, his answers thereto in writing, and then caused him to sign his deposition in my presence, as already stated.

In testimony whereof I have hereunto set my hand and seal on this the 8th day of March, A. D. 1893.

PHILLIP B. FRIERSON,
Notary Public.

(Endorsed:) Filed in evidence in 4048. "J." M'ch 16,'93. F. A. Leonard, clerk. Filed March 9, '93. F. A. Leonard, clerk.

216 *Agreement—J. H. Willard, U. S. Engineer, & A. Hart.*

Memorandum of agreement entered into this twentieth (20th) day of January, eighteen hundred and ninety-three (1893), between Captain J. H. Willard, corps of engineers, of the first part, and A. Hart, of Hart's Island plantation, parish of Caddo and State of Louisiana, of the second part:

This agreement witnesseth, that said Captain J. H. Willard, corps of engineers, for and in behalf of the United States of America, and the said A. Hart for himself, his heirs, executors and administrators, have mutually agreed and by these presents do mutually agree and covenant, to and with each other, as follows:

The said party of the second part shall furnish for the continuing the work of constructing the Bayou Pierre and Shreve cut-off levee, or right bank of Red river below Shreveport, La., all of the teams for plows, drag scrapers, wheel scrapers, snatch teams, harness for teams, all of the tools and implements required for same, the drivers for same, and to care for and feed the teams, pay the drivers under such terms as are usually made, so that there shall be no demands against the United States for pay, board or lodging of teamsters, or any other charge except for teams with teamsters and implements.

Payments shall be made unto the party of the second part by the party of the first part for the hire of the said teams with teamsters and implements at the following rates per day of eight (8) hours actually employed on the aforesaid work of constructing the Bayou Pierre and Shreve cut-off levee, not including the time required for preparing teams for work, feed, or care for them, viz:

1. For each snatch team, harness, and teamster three (3) dollars per day.
2. For each plow team, plow, harness, and teamster, three (3) dollars per day.

217 3. For each drag scraper, team, harness and teamster, three (3) dollars and twenty-five (25) cents per day.

4. For each wheel scraper, team, harness, and teamster, three (3) dollars and fifty (50) cents per day.

In view of the benefit to be derived by the party of the second part from the construction of the aforesaid levee, he also agrees to furnish the overseer in charge of the work, with all tools, picks, spades, shovels, axes, wheelbarrows, and whatever else of the kind, such as planks, stakes, etc., that may be required for a rigorous prosecution of the work, and to furnish subsistence and lodging for the overseer in local charge, and any assistants that may be sent by the party of the first part to inspect the work, without charge against or cost to the United States. Payments shall be made to the said A. Hart weekly upon bills certified by the overseer in local charge, reserving twenty-five (25) per cent. from each payment until the whole work is completed, or operations closed by the United States.

In witness whereof, the undersigned have hereunto placed their hands and seals the date first hereinbefore written.

J. H. WILLARD,
Captain Corps of Engineers.
ARCHIBALD HART.

Witnesses:
WILLIAM W. ROAF.
CHARLES J. CONEY.

Filed in evidence in suit 4048, "K," March 15, '93.

W. G. BONEY, *Dep. Clerk.*

Opinion and Judgment.

EGAN
vs.
HART *et als.*

Plaintiff owns an island plantation a few miles below Shreveport on Red river.

Along the northern side of the island flows a stream known
218 as Bayou Pierre, which is both an effluent and affluent of the Red river, and at a point on said stream distant about a quarter of a mile from plaintiff's land defendants are constructing a dam or dike across said stream.

Plaintiff complains of this and asks that the work be stopped by injunction, on the ground that it will destroy a natural drain to her plantation, which carries off so large an amount of water that with existing levees she can protect her lands from inundation at any ordinary stage of water in Red river.

She avers that Hart, the builder of said dike, was employed by private parties to do the work; that the funds to defray the cost thereof were supplied by private parties from no public motive, but solely to subserve their own interests; that the pretended contract between Hart and the State was a mere cloak to hide a private enterprise; that the State board of engineers had no authority to adjudicate a contract to close this outlet, such authority being confined to the board of commissioners of the Caddo levee district by virtue of act 74 of 1892; that this dam, if built, will cause her plantation to overflow at a lower stage of water in Red river than hitherto, and that to prevent this she will be forced to add to the levees already built and to make a new levee at an expense of over $6,000.

She estimates that the direct and immediate effect of closing the bayou would be to injure her in the sum of $20,000, and that she has already been damaged in the sum of $6,000.

She prays that the judgment be perpetuated; that the dam be ordered to be removed, and for judgment for the amount of damages claimed.

In an amended petition the further ground is set up of that Bayou Pierre is a navigable stream and has, in fact, been navigated for a great number of years by steamboats, and that the State
219 cannot exercise or delegate to persons or corporations the power to impede navigation or dam a navigable stream.

1. Is the construction of this dam across the bayou a public work or is it one devised purely in the interest of private individuals?

The evidence leaves no room for doubt on this point, although it is shown that the money of private individuals has been contributed to pay in part the cost of constructing it.

It is a public work planned and located by State authority and is a part of a system of levees ordered by the State for the prevention of overflows. It is the initial point of a line of levee, the

propriety, location, and construction of which have been determined by the State, acting through the State board of engineers, its accredited and duly authorized agent. It begins on the highlands, on the west bank of the bayou, and extends thence across the bayou to Hart's island, and from there to Dixie plantation, on Red river.

The record further shows that $4,000 of the cost of construction were paid with State funds and a similar amount with monies belonging to the General Government, facts altogether irreconcileable with the idea that this was a mere private work, devised and executed for private benefit.

The participation of the United States engineers shows clearly that it was the undertaking of the State, with the aid of the General Government, not only to protect the country from inundation, but incidentally to improve the navigation of Red river by closing one of its outlets.

The simple fact, then, that the money of private individuals was contributed to this end cannot rob the work of its public character.

In these respects the case differs essentially from Chaffe *vs.*
220 Trezevant, 38 A., 746, in which the court found that the work enjoined—*i. e.*, the straightening of a bend in Red river—was a purely private interprise, only an experimental — inaugurated in the interest and for the advantage of a few private individuals, and could not therefore be maintained under the police power of the State.

2. Plaintiff complains that the contract to build this dam was adjudicated to Hart by the State board of engineers, when it ought to have been adjudicated by the board of levee commissioners of the Caddo levee district.

This may be true in law, but the wrongful adjudication of the contract was not the cause of the injury she complains of. That injury was caused by the construction of a dam, and if she has a legal right to recover damages for such injury, that right could be enforced against him who occasioned the injury, whether he was the adjudicatee of the levee board or of the engineer board.

If Hart is responsible, it is clear that he could not evade responsibility under a contract made with either board, but if he is not responsible in damages, either because no injury has been inflicted or because the injury is *damnum absque injuria*, he cannot be made so by reason of the fact that this contract was made *ultra vires*.

It follows that the legality or illegality of the adjudication cuts no figure in the case. If plaintiff has no legal right to recover damages in a case like this, that that is the end of the suit, and this brings us to the consideration of her alleged right of action.

3. We have already seen that the public work is a continuous line of levee, having for its initial point the dam in question and extending to a plantation on Red river, and we have also seen
221 that it was ordered, located, and constructed under State authority.

In the early days of the State the construction and maintenance of the levees were made at the expense of the front proprietors.

These duties were subsequently imposed on the several police juries of the State, but since the adoption of act 39 of 1877 the State has assumed their performance.

The power to do these things can be exercised only through agents, and the act of 1877 designates the agents and vests them with ample authority for these purposes.

This agency is composed of a State board of engineers, which is a public political organization, created for a great public enterprise and clothed with extensive powers of enquiry, discrimination, and quasi-judicial discretion for the purposes of determination and execution.

The purpose for which this board was created was primarily to protect the alluvial country from inundation and incidentally to improve the navigation of its navigable water-courses.

Act 39 of 1877, 34 A., 494.

It is made the duty of this board of engineers to make a careful survey of all public levees in the State after the subsidence of high water, to report to the governor the extent of repairs necessary and the new levees to be built which are of prime importance to the State at large, and to furnish estimates and specifications in order that contracts for work may be let out at the earliest possible moment.

To accomplish these purposes the State provides a one-mill levee tax which is expended under the direction of the State board. See act 73 of 1882, act 83 of 1884, and act 60 of 1886.

This last act, after providing for the distribution of this fund by the State treasurer among the districts and subdistricts, authorizes the engineer board to use in extraordinary emergencies
222 in one district the fund appropriated to some other district, the intent of the act being, as declared, to empower the board to spend the whole engineer fund in any one district when, in its judgment, the public good may require it. See also acts 102 & 74 of 1892, and testimony of Richardson.

The construction and maintenance of public levees being, then, a matter of public necessity which concerns at least half the people of the State directly and incidentally of the whole State, the legislature or the agents to whom it has delegated the power of determination must be the exclusive judge of the necessity, location, and mode of building and maintaining the levees.

This power is transmissible by the State, and necessarily includes every incidental authority to do that which the State has primarily the right to do, including the power to close outlets when such closure becomes necessary to preserve the continuity of a line of public levees.

The right to close outlets may be fairly inferred from act 78 of 1886, which prescribes the manner of building levees where they cross bayous, but act 74 of 1892 removes all doubt on the matter by an express grant of authority to close by levees, dykes, or otherwise any outlets, bayous, or sloughs in the Caddo levee district.

See — 18 of that act.

Plaintiff contends that this section violates the Constitution and laws of the United States by permitting the closure of a navigable stream, and much evidence was taken to prove that Bayou Pierre is navigable.

It shows that from Grande Ecore, where it enters Red river, to a point some miles below its junction with Tone's bayou—a stream flowing out of the river—Bayou Pierre has been frequently navigated by steamboats.

223 But from the point of junction to the dam in question it has never been navigated and is unnavigable.

Between these two points it is nothing but a high-water outlet, going dry every summer at many places, choked with rafts and filled with sand, reefs, etc. It has no channel capacity. In various localities it spreads out into shallow lakes and over a wide expanse of country, and is susceptible of being made navigable just as a ditch would be if it were dug wide and deep enough and kept supplied with a sufficiency of water.

See observations of the court in Boykin *vs.* Shaffer, 13 A, 129.

Even were it navigable throughout its entire length, still it is a stream wholly within the borders of Louisiana, and as respects streams which are navigable only within the limits of a single State the authority of a legislature is complete.

It has unlimited authority to erect or sanction the construction of bridges, dams, railways, or any other public works across navigable waters, subject only to the paramount authority of the National Government, which authority only affects rivers that are highways of commerce between different States.

34 A., 970, & authorities cited; 119 U. S., 280, 285, 125; I, 1–17.

The exclusive right to determine the necessity, location, and mode of building levees within her borders is derived from the police power of a State.

This is a vast and undefinable power, the exercise of which, in many instances, results in serious injury to particular individuals. In one case it resulted in the total destruction of a plantation which the evidence clearly showed was worth $75,000.

Bass *vs.* State, 34 A., 494.

In that case this police power is fully discussed and many examples given of the enforcement. It is shown to be in principle a power to protect, grounded upon the maxim "*salus populi suprema lex*," under which individual welfare must, in cases of public

224 necessity, yield to that of the community.

The court holds that this power is inherent in every government and is exercised without making compensation for property taken or damages for public utility. Whatever damage or injury may result is *damnum absque injuria* and cannot be recovered.

Neither the levee or the dam of which it forms a part is on the

land of plaintiff, hence there is no invasion or taking of her property for public purposes.

On the contrary, it is admitted that the dam is located at some distance from the nearest point from her plantation, but, even if the levee and dam were on her land, so much of it as was necessary for the making and repairing of levees could be taken for these purposes without making compensation therefor.

R. C. C., 665; Bass *vs.* State, 34 A., 497.

A fortiore must the same result follow where her property is simply damaged for public purposes by the exercise of the police power of the State.

For there is a manifest distinction between this power and the right of eminent domain. Under the latter private property is expropriated for public utility—*i. e.*, it is taken from the owner and used for the public good upon adequate indemnity previously made, which in all cases is measured by the value of the property taken.

On the other hand, the police power of a State does not appropriate private property for public use, but simply regulates its enjoyment by the owner, who implicitly assents that his individual interest shall yield to the public necessity and that his property may be damaged or even destroyed for the public good. If he suffers injury he is compensated, under the theory of the law, by sharing in the general benefits, although no compensation is made to him.

Hence, the law concerning the expropriation or damages of
225 private property for public use does not apply to such lands on the banks of navigable rivers as may be found necessary for levee purposes, and where there are levees established by law the levees form the banks. R. C. C., 457, 861, 862.

The damages claimed in this suit are largely consequential and conjectural, and the supreme court, in 41 A., 830, speaking of this sort of injury, says, "Article 156 of the present constitution, in requiring compensation for property damaged for public purposes only, extended its protecting shield over one additional injury and required compensation not only for property taken, but for property damaged also."

In the case of a taking, the measure of compensation is the value of the property taken, and in the case of damage such measure is the diminution in the value of the property for sale or rental. There is no warrant for extending this liability one whit beyond this. Mere consequential injuries to the owner, arising from discomfort, injury to business, and the like, remain as they were before, *damnum absque injuria*, particular sacrifices which society has the right to inflict for the public good.

See also Chicago *vs.* Taylor, 125 U. S., 161, and authorities cited in Bass *vs.* State, 34 A., 494.

It is difficult to distinguish on principle the Bass case from the instant one.

In the former, the State board of engineers, acting under authority

conferred by act 140 of 1877, located and caused to be built a line of levee in the rear of Bass' plantation below a certain point, by reason of which the plantation was thrown outside of the levee and the natural flow of the water back into the bayou and swamps obstructed, thereby causing the water to back up and entirely overflow the plantation. In his petition Bass averred that the
226 location and construction of this levee in the rear of his plantation was illegal and unnecessary to secure the country from overflow, and that, whether necessary or not, the State had no right to obstruct the natural flow of the waters and cause the inundation and total destruction of his plantation.

He claimed $75,000 in damages, and the court was satisfied that if he was entitled to recover at all he was entitled to the whole amount claimed.

But it denied his right to recover on the ground that the State, in the exercise of her police powers, had the exclusive right to determine the propriety, location, and mode of building levees within her borders; that after she has thus decided and has contracted for the public enterprise, a riparian owner of the land on which the levee is about to be built cannot effectively remonstrate and require it to be constructed differently or in a different locality, and that in the event of subsequent damages sustained by him such damages are *damna absque injuria* and cannot be recovered.

In the instant case, as we have already shown, the dam in question is not a local, isolated work, devised and executed for the benefit of a few individuals, but is a part of a line of levee, the propriety, location, and construction of which were determined by the State, through its duly accredited agents, the State board of engineers.

This determination, then, being a purely lawful act and abundantly sanctioned by law, it follows that no damage can result from doing it and none can be recovered.

34 A., 499; 35 A., 646; 34 A., 970, 974; Mann. Unrep. Cases, 34, 38.

The case is with the defendants, and the plaintiff's demands must be rejected.

Damages.

Where the writ is sued out without malice under the ad-
227 vice of experienced counsel and under an honest belief that it is essential for the protection of plaintiff's rights, the defendant cannot recover any more than actual damages.

There are—

1. Attorneys' fees paid or incurred in procuring a dissolution of the writ, but not fees paid or incurred in defending on the merits. 34 A., 341; 33 A., 6; 34 A., 58, & authorities there cited.

It is easy enough to state the rule, but not always easy to apply it.

In this case there was no motion made or hearing thereon to dissolve the writ. On the contrary, it was dissolved on bond after due

inquiry and on the written motion of defendant in about eight days after it had been executed.

The case then came up for trial on the merits and was so tried, and the services of counsel rendered on the trial were as much rendered on the merits as to dissolve the writ, and *vice versa*. It is therefore not easy to properly apportion them, and in view of this difficulty I think I am justified in adopting Mr. Randolph's estimate of $250 as a fair remuneration of the services rendered in procuring the dissolution of the writ.

2. Loss of profits, not speculative in character, or expenses and injuries resulting from a stoppage of the work of building this levee are also actual damages and may be recovered. In this case these expenses would include the hire and feed of teams and drivers hired from other persons and the reasonable profit he could have realized from using his own teams, less the cost of feeding them.

Taking into consideration all the facts and circumstances on this branch of the case, I think a judgment for $850 will amply compensate defendant for all the injuries he has sustained by reason of this injunction.

228 There must, then, be judgment in favor of Hart, rejecting plaintiff's demand, dissolving the injunction and cancelling bond given by him, and for $850 as damages.

S. L. TAYLOR,
Dist. Judge.

Judgment.

In 1st Judicial District Court, Parish of Caddo, State of Louisiana.

Mrs. M. L. Egan
vs.
A. Hart *et als.*; State of La., Intervenor. } No. 4048.

In this case, for the reasons assigned in the written opinion on file, it is ordered, adjudged, and decreed that the injunction herein sued out by the plaintiff be dissolved and that this suit be dismissed at her cost; and it is further ordered and decreed that the defendant A. Hart do have and recover of the said plaintiff the sum of eight hundred and fifty dollars as damages, with legal interest from the date, and all his costs in this behalf expended; and it is further ordered that the bond executed by said defendant, A. Hart, for dissolution of said injunction be, and the same is hereby, cancelled.

Done, read, and signed in open court this the 23rd day of June, A. D. 1893.

S. L. TAYLOR,
District Judge.

(Endorsed:) Filed June 23, '93. F. A. Leonard, clerk.

Motion — New Trial.

District Court, Caddo Parish, Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et als.*
No. 4048.

Now comes plaintiff and moves the court for an order granting her a new trial of above numbered and entitled cause on the
229 ground that the judgment lately rendered therein is contrary to the law and the evidence.

She prays for all orders necessary, for costs, and for general relief.

F. G. THATCHER,
Att'y for Pl'ff.

(Endorsed:) Filed June 22, '93. F. A. Leonard, clerk.

Motion for Appeal.

District Court, Caddo Parish, Louisiana.

LILLIAN W. EGAN
vs.
A. HART *et als.*
No. 4048.

Now comes plaintiff and moves the court for an order granting her an appeal bond suspensive and devolutive from the judgment lately rendered against her in above numbered and entitled cause, returnable according to law to the honorable supreme court of the State of Louisiana, at its next session at Shreveport, Caddo parish, La., to be begun and holden at said city of Shreveport on the 2nd Monday of October, A. D. 1893. She prays that the amount of the suspensive and devolutive appeal bond be fixed.

She prays for all orders necessary and for general relief.

F. G. THATCHER,
Att'y for Pl'ff.

On reading above and foregoing petition, the law being in favor thereof, it is ordered that an appeal be granted plaintiff, suspensive and devolutive, as prayed for, returnable according to law to the honorable supreme court of Louisiana, at its next session at Shreveport, Caddo parish, La., to be begun and holden on the 2nd Monday in October, A. D. 1893. It is further ordered that the devolutive appeal bond be fixed at two hundred dollars ($200) and suspensive appeal bond according to law. This done, read, and signed in open court this the 22nd day of June, A. D. 1893.

S. L. TAYLOR,
230 *Judge 1st Jud'l Dist. of La.*

(Endorsed:) Filed June 22, '93. F. A. Leonard, clerk.

Appeal Bond.

STATE OF LOUISIANA, }
Parish of Caddo. }

Know all men by these presents that we, Lillian W. Egan, as principal, and J. H. Prescott and W. F. Taylor, as sureties, are held and firmly bound unto F. A. Leonard, clerk of the first judicial district court, Caddo parish, Louisiana, and his successor in office, in the full sum of thirteen hundred and fifty dollars; for payment of which, well and truly to be made, we bind ourselves, our heirs and legal representatives, firmly and *in solido* by these presents.

Dated at Shreveport, La., this 14th day of July, 1893.

The condition of the above obligation is such that whereas the above-bounden Lillian W. Egan has applied for and obtained an order for a suspensive and devolutive appeal from the judgment lately rendered against her by the honorable first judicial district court, Caddo parish, La., in the case of Lillian W. Egan *vs.* A. Hart & Henry Richardson & F. M. Kerr, in which The State of Louisiana is intervenor, No. 4048 on the docket of said court, returnable to the honorable supreme court of Louisiana, at Shreveport, La., according to law, therefore if the said Lillian W. Egan shall well and truly prosecute her said appeal and shall satisfy whatever judgment may be rendered against her thereon, or the same be satisfied by the proceeds of the sale of her estate, real or personal, then this obligation to be null and void; otherwise to remain in full force and effect, and the said surety shall be liable in his place

MRS. L. W. EGAN,
Authorized by me, W. L. EGAN.
J. H. PRESCOTT.
W. F. TAYLOR.

(Endorsed:) Filed July 15, '93. F. A. Leonard, clerk.

231 *Minutes of the Court.*

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it remembered that a regular term of the first judicial district court of the State of Louisiana, held in and for Caddo parish, was begun and held at the court-house, in the city of Shreveport, said parish, on this the 5th day of September, A. D. 1892, it being the first Monday in said month, when the following orders were made and proceedings had, to wit:

Present: His honor S. L. Taylor, judge, presiding; John Lake, sheriff, and F. A. Leonard, clerk.

SHREVEPORT, LOUISIANA, FRIDAY, *September 30th*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Petition to dissolve injunction on bond filed.

SHREVEPORT, LOUISIANA, SATURDAY, *October 1st*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

By consent of parties, the motion for new trial to be argued in chambers and set Monday.

STATE OF LOUISIANA,
Parish of Caddo.

Be it remembered that a regular term of the civil district court of the first judicial district of the State of Louisiana, held in and for the parish of Caddo, was begun and held at the court-house of said parish, in the city of Shreveport, on this the 7th day of
232 November, A. D. 1892, it being the first Monday in said month, when the following orders were made and proceedings had, to wit:

Present: His honor S. L. Taylor, judge, presiding; J. S. Young, sheriff, and F. A. Leonard, clerk.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Amended petition filed for hearing without prejudice & hearing set for Wednesday.

SHREVEPORT, LOUISIANA, WEDNESDAY, *November 9th*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of Monday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Motion to file amended petition argued & taken under advisement.

SHREVEPORT, LOUISIANA, FRIDAY, *November* 11*th*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Judgment on motion to file amended petition allowing same.

SHREVEPORT, LOUISIANA, SATURDAY, *November* 12*th*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Leave granted all parties to take testimony generally in & out of the State.

SHREVEPORT, LOUISIANA, MONDAY, *November* 14*th*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
233 The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Default against Mrs. Egan on the intervention of the State.

SHREVEPORT, LOUISIANA,
WEDNESDAY, *November* 16*th*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Answer to original & amended petition & reconventional demand filed.

SHREVEPORT, LOUISIANA, SATURDAY, *November* 26*th*, 1892.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Continued by consent.

STATE OF LOUISIANA,
Parish of Caddo.

Be it remembered that a regular term of the civil district court of the first judicial district of the State of Louisiana, held in and for the parish of Caddo, was begun and held at the court-house of said city of Shreveport on this the 6th day of March, 1893, it being the first Monday in said month, when the following orders were made and proceedings had, to wit:

Present: His honor S. L. Taylor, judge, presiding; J. S. Young, sheriff, and F. A. Leonard, clerk.

SHREVEPORT, LOUISIANA, SATURDAY, *March 11th*, 1893.

Court met pursuant to adjournment.

His honor S. L. Taylor, judge, presiding.

234 The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Motion to show why certain depositions should not be used in evidence filed. Rule granted and service accepted.

SHREVEPORT, LOUISIANA, TUESDAY, *March 14th*, 1893.

Court met pursuant to adjournment.

His honor S. L. Taylor, judge, presiding.

The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Rule to show cause why depositions of Walworth *et al.*, witnesses for defendants, should not be read in evidence, made absolute.

Case taken up in regular order, evidence partly adduced, and continued for further evidence.

SHREVEPORT, LOUISIANA, WEDNESDAY, *March 15th*, 1893.

Court met pursuant to adjournment.

His honor S. L. Taylor, judge, presiding.

The minutes of yesterday were read and approved in open court.

Mrs. L W. EGAN
vs. } 4048.
A. HART *et als.*

Case resumed, evidence partly adduced, and continued for further evidence.

SHREVEPORT, LOUISIANA, THURSDAY, *March 16th*, 1893.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Case resumed, evidence concluded, argued, and case submitted on briefs to be filed.

STATE OF LOUISIANA,
Parish of Caddo.

235 Be it remembered that a regular civil term of the first judicial district court of the State of Louisiana, held in and for the parish of Caddo, was begun and held at the court-house of said parish, in the city of Shreveport, on Monday, June 19th, 1893, it being the third Monday in said month, when the following proceedings were had and orders made, to wit:

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Judgment dissolving injunction.

SHREVEPORT, LOUISIANA, THURSDAY, *June 22nd*, 1893.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. L. W. EGAN
vs. } 4048.
A. HART *et als.*

Motion for new trial filed and overruled. Motion for appeal, devolutive and suspensive, filed and appeal granted, returnable to the honorable supreme court at its term commencing at Shreveport on the second Monday in October next, devolutive appeal bond fixed at $200, and suspensive according to law.

SHREVEPORT, LOUISIANA, FRIDAY, *June 23rd*, 1893.

Court met pursuant to adjournment.
His honor S. L. Taylor, judge, presiding.
The minutes of yesterday were read and approved in open court.

Mrs. LILLIAN W. EGAN
vs. } 4048.
A. HART *et als.*

Judgment signed.

Certificate of Clerk.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing transcript, from pages 1 to 209, inclusive, contains a full, true, and complete
236 record of all papers filed, proceedings had, and orders made in suit No. 4048 on the docket of the first district court of Louisiana, in which Mrs. Lillian W. Egan and husband are plaintiffs and A. Hart *et als.* are defendants, as shown by the records of my office.

Given under my hand and seal of office on this the 11th day of October, 1893.

[SEAL.] (Signed) F. A. LEONARD,
Clerk 1st District Court of Louisiana.

Proceedings in the Supreme Court of the State of Louisiana, at Shreveport.

Answer to appeal and prayer for amendment of judgment. Filed Oct. 23, 1893.

In the Supreme Court, State of Louisiana, City of Shreveport, October Term, A. D. 1893.

Mrs. LILLIAN W. EGAN & HUSBAND, Appellants,
vs.
A. HART *et als.*, Appellees. } No. 364.

Now come defendants and appellees in the above-entitled suit and for answer to the appeal prosecuted by plaintiffs aver that the judgment appealed from is erroneous to their prejudice in this, viz., in not allowing defendants judgment for the sum of one thousand dollars attorneys' fees, as claimed in their reconventional demand.

Wherefore appellees pray that the judgment of the lower court be amended by increasing the allowance of attorney fees from $250 to $1,000.00, and as thus amended the judgment appealed from be affirmed with costs of appeal.

(Signed) LAND & LAND, *Att'ys.*

237 *Agreement of Counsel.*

Filed Oct. 25, 1893.

In the Supreme Court of Louisiana, at Shreveport.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et al.* } No. 364.

It is hereby mutually agreed by and between the parties to above-entitled suit that the original maps and plans offered in evidence

on the trial of the cause in the lower court may be used before the supreme court, and that copies need not be embodied in the transcript.

While avoiding the entailing of cost, we also believe the inspection of the original maps and plans will be more satisfactory to both court and counsel than the relying upon copies thereof.

Dated the 18 day of October, A. D. 1893.

(Signed) LAND & LAND,
For Defendants.
F. G. THATCHER,
J. C. EGAN,
For Plaintiff.

Agreement of Counsel.

Filed Oct. 30, 1893.

Mrs. LILLIAN W. EGAN *vs.* A. HART *et al.* } No. 364 on Docket of Supreme Court of Louisiana, at Shreveport.

Consent is hereby given that above case be transferred to New Orleans for decision and that judgment may be rendered there.

This Oct. 27th, 1893.

(Signed) J. C. EGAN,
F. G. THATCHER,
Att'ys for Plaintiff.
LAND & LAND,
Att'ys for Def'ts.

238 *Proceedings in the Supreme Court of the State of Louisiana, at New Orleans, Louisiana.*

Transcript of appeal. Filed at New Orleans November 6, 1893.

Mrs. LILLIAN W. EGAN & HUSBAND *vs.* ARCHIE HART *et al.* } No. 11376.

Appeal from the first district court, parish of Caddo.

F. G. Thatcher, Esq., for plaintiff and appellant.

J. R. Land, Esq., dist. att'y, and Land & Land, for defendants and appellees.

(Here follow maps marked pp. 239 & 240.)

241 *Opinion of the Court.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *November 20th*, 1893.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Charles Parlange, associate justices.

His honor Mr. Justice Parlange pronounced the opinion and judgment of the court in the following case:

Mrs. LILLIAN W. EGAN & HUSBAND
vs.
A. HART *et als.*
No. 11376.

Appeal from the parish of Caddo.

This is an injunction suit to restrain the construction of a dam across Bayou Pierre.

Plaintiff owns a plantation in Caddo parish known as Grigsby's island and which is bounded on one side by Red river and on the other sides by bayous or streams connecting with Red river. Bayou Pierre bounds her plantation in the rear. She complains that A. Hart and H. B. Richardson, pretending to act as chief engineer of the board of State engineers, and F. M. Kerr, pretending to act as engineer of said board, have combined and conspired to build a dam across Bayou Pierre at a distance of about one mile and a half from Red river and of about a quarter of a mile from the lowest point of her land. She alleges that the defendants have announced their intention to close Bayou Pierre and have ac-
242 tually begun the work necessary to carry out their purpose.

She alleges that the defendant Hart was employed almost wholly by private persons to do said work; that the necessary funds were supplied by interested private parties, who for their own selfish interests and from no public motive have entered into the combination to dam said bayou; that any pretended contract between Hart and the State is a mere pretext or subterfuge and was intended as a cloak to cover their illegal acts and with the hope to shield themselves from the legal consequences of their wrongful acts. She avers specially that if the acts of defendants are claimed to be done by virtue of any contract with the State or its officials and in accordance with law that the board of engineers has no power to close such a natural outlet as Bayou Pierre is, and she says that since the passage of act 74 of 1892 the board of engineers is without power to advertise for bids and to let contracts for building public levees in Caddo parish and for closing Bayou Pierre, but that said power is lodged exclusively in the board of commissioners of the Caddo

of levee commissioners, who shall, in the mode and manner to be provided by law, have supervision of the erection, repairs, and maintenance of the levees in the district, and to that effect they may levy a limited tax on the taxable property within the district. It is clear that the creation of levee districts is left to the discretion of the General Assembly. It is equally clear that the method and manner in which the commissioners when created are to have supervision of the levees within the district are also left to the discretion of the General Assembly. Peart *vs.* Levee District, 45 An., 422. A levee district is one of the instrumentalities which the General Assembly may use in performing its duty of maintaining a levee system in the State. The constitution does not provide, either expressly or by implication, that when a levee district is created the General Assembly shall be powerless to employ any other instrumentality than that of the levee district within its limits. The general engineer fund created by act 33 of 1879 has been frequently and fully recognized by the General Assembly since the adoption of the present constitution. Under act 33 of 1879 the power of the governor is clear to contract for building levees
246½ with moneys in the general engineer fund.

Equally clear is the power of the board of State engineers, acting within their official scope and duty, to cause to be closed the bayou across which the dam in question was being constructed at the time this suit originated. It is a necessary incident of their powers and duties under said act 33 of 1879. The action of the General Assembly would have been futile indeed if, with full knowledge of the topography of the State, it had charged the State engineers with the great duty of protecting the alluvial part of the State from overflows, but had withheld from them the power to build levees across bayous and sloughs. Act 78 of 1886 assumes as a matter of course that the board of State engineers has the power, and said act provides certain requisites to be observed in constructing levees across bayous and sloughs; but in the instant case, if any doubt could have existed as to the power, sec. 18 of act 74 of 1892, creating the Caddo levee district, would have removed it by providing that the State engineers are authorized "to survey and locate, repair or remove or change any and all levees in the district, and are specially authorized to cause to be closed by levees, dykes or otherwise such outlets, bayous or sloughs, or to open the same, as in their judgment may be necessary to carry out the object of this act, and are solely charged with the responsibility of the location of all levees in said district." This section violates no provision of the constitution.

As to plaintiff's contention that Bayou Pierre is a navigable stream, we have carefully considered the voluminous testimony on that part of the case and we are clear that the upper part of Bayou Pierre, in which the dam in question is situated, is not
247 navigable, and that the navigation of even the lower part of Bayou Pierre, a considerable distance below the dam, is attended with many obstacles and difficulties. On this point the district judge says: "From Grande Ecore, where it (Bayou Pierre)

enters Red river, to a point some miles below its junction with Tone's bayou, a stream flowing out of the river. Bayou Pierre has been frequently navigated by steamboats; but from the point of junction to the dam in question it has never been navigated and is unnavigable. Between these two points it is nothing but a high-water outlet, going dry every summer at many places, choked with rafts and filled with sand, reefs, &c. It has no channel; in various localities it spreads out into shallow lakes and over a wide expanse of country, and is susceptible of being made navigable just as a ditch could be if it were dug deep and wide enough and kept supplied with a sufficiency of water." We fully concur in this finding. Besides, Bayou Pierre is wholly within the State, and the authority of the legislature over it is complete. Hamilton *vs.* R. R. Co., 34 An., 975; Boykin *vs.* Shaffer, 13 An., 129.

There is no force in plaintiff's contention that the act of Congress admitting Louisiana into the Union forbids the General Assembly from closing by a dam such a stream as Bayou Pierre. Boykin *vs.* Shaffer, 13 An., 129; Hamilton *vs.* R. R., 119 U. S., 285; Williamette Iron Bridge Co. *vs.* Hatch, 125 U. S., 1.

In Peart *vs.* Levee District, quoted above, and in the cases therein cited this court has said that in locating and building her public levees the State acts in the exercise of the police power, "and that private injury resulting from the legitimate exercise of this
248 legal right is *damnum absque injuria*, to which the individual must submit as a sacrifice to the public safety and welfare." The doctrine applies to the instant case.

Plaintiff's plantation is an island surrounded by levees except where the banks are sufficiently high without them. There is evidence strongly indicating that her plantation is by nature in the shape of a basin, the land sloping on all sides to the centre. However this may be, it seems clear that the condition of her property, even before the building of the dam, must have been highly unfavorable to drainage. Whether the effect of the dam at a distance of a quarter of a mile from her property will be to seriously damage it is in a great measure conjectural. She has neither alleged nor shown any interest in the navigability of Bayou Pierre. However, whether she has suffered damage or not, she is not entitled to the relief she prays for.

The appellee Hart prays for an increase of the damages awarded, but we see no reason to disturb the finding of the district judge.

Judgment affirmed at plaintiff's costs.

249 *Final Decree.*

Extract from the minutes.

NEW ORLEANS, MONDAY, *November 20th*, 1893.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Charles Parlange, associate justices.

Mrs. LILLIAN W. EGAN and HUSBAND
vs.
ARCHIE HART *et al.*
No. 11376.

Judgment affirmed at plaintiff's costs.

Motion and Order for Delay.

Extract from the minutes.

NEW ORLEANS, WEDNESDAY, *November 22nd*, 1893.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Charles Parlange, associate justices.

Mrs. LILLIAN W. EGAN and HUSBAND
v.
ARCHIE HART *et al.*
No. 11376.

On motion of F. G. Thatcher, Esq., of counsel for plaintiff and appellant, it is ordered by the court that the appellant be allowed a delay of ten judicial days—that is to say, until and including the 7th day of December, A. D. 1893—to prepare and file her petition for rehearing in this cause.

Petition for Rehearing.

Filed December 7, 1893.

In the Supreme Court of Louisiana.

Mrs. LILLIAN W. EGAN
vs.
A. HART *et al.*
No. 11376.

250 *Application for Rehearing.*

Plaintiff respectfully asks a rehearing of above case for the following reasons:

1st. The evidence establishes that steamboats such as usually ply Red river can leave St. Louis, Missouri, float down the Mississippi river to the mouth of Red river, up Red river to where Bayou Pierre enters Red river, and then up Bayou Pierre a distance of 30 miles or more—that when Red river is navigable Bayou Pierre for a distance of 20 or 30 miles from its mouth is so—thus making Bayou Pierre a navigable stream of the United States.

2nd. That under sec. 5251, U. S. Rev. Statutes, it is expressly provided "that all the navigable rivers and waters in the former Territory of Orleans and Louisiana shall be and forever remain public highways."

3rd. That Congress has provided that "it shall not be lawful

hereafter to commence the structure of any bridge, draw-bridge, piers, and abutments or other works in any port, road, navigable river, or navigable waters of the United States under any act of the Legislative Assembly of the State until the location and place of such work have been submitted to and approved by the Secretary of War."

Sup. to Rev. Statutes (act of Sept. 18th, 1890), page- 801, 802, sec. 7.

4th. Much of the able opinion of the learned court is devoted to points that were conceded both in argument and brief by plaintiff.

5th. On the question of damages plaintiff claims that the amount allowed defendant is excessive; and as the opinion of the lower court does not go into details at all on this question and as the matter was not touched upon in argument or brief by plaintiff's counsel, we desire to direct the attention of the court to
251 some points in this connection. With the attorneys' fees as allowed def't we have no serious contention, but a lumping sum of $600.00 is allowed for general damages, and this is not proven.

Plaintiff was not actuated by malice, but acted under advice of counsel in the prosecution of what she believed to be a legal right, and the court will only allow the actual damages proven.

An analysis of Hart's own testimony does not make any amount certain. He nowhere gives the number of teams hired nor the price paid.

The nearest approximate result that can be arrived at from his whole testimony is that he had 9 teams employed at 1.75 per day, and feed, 75c.; total, $2.50 per day. On the 20 he says he had hired he fails to testify positively as to am't paid for the remaining 11. He says some of the 11 he did not pay for, and only fed them. He does not give the number of each. On the question of damages he should have made his case certain.

But, above and beyond all, Robinson, the deputy sheriff who serve- the writ of injunction on Hart, testifies that he served the writ at the noontime hour, when teams and men were resting; that Hart had just begun work.

It is in evidence that Hart had a contract for a long line of levee, of which the dam the building of which was enjoined was a mere incident. Nothing prevented Hart and his men and teams from proceeding, when the noon hour was passed, to his work upon the levee contiguous to said bayou. He could then have proceeded, as he did do, to bond the injunction. No act of plaintiff compelled him and his teams to remain idle an hour.

Moreover, Hart's contract was a losing one.

We confidently ask for a rehearing upon this point at least.

We respectfully submit the application.

(Signed) J. C. EGAN,
F. G. THATCHER,
Att'ys for Pl't'ff.

252 *Rehearing Refused.*

Extract from the minutes.

NEW ORLEANS, WEDNESDAY, *December 18th*, 1893.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Charles Parlange, associate justices.

Absent: Samuel D. McEnery, associate justice.

Mrs. LILLIAN W. EGAN and HUSBAND
vs.
ARCHIE HART *et al.*
} No. 11376.

It is ordered that the rehearing applied for in this case be refused.

Petition for Writ of Error.

Filed December 28, 1893.

To the honorable supreme court of Louisiana:

To the honorable justice- of the Supreme Court of the United States:

The petition of Mrs. L. W. Egan, wife of Dr. W. L. Egan, joining her in this application, respectfully shows that heretofore, to wit, in the year 1893, and in the district court of the parish of Caddo, she instituted suit against A. Hart *et al.* to enjoin them from constructing a dam across Bayou Pierre, a navigable stream, and thus destroying its navigation, and for damages in the sum of ten thousand dollars; in which said suit she alleges that her right to maintain said stream free from any dam and from the destruction of the navigation upon said stream arose from the Constitution of the United States and from the acts of Congress—see R. S., title Rivers and Harbors, sec. 5251; in which acts it was declared that all the
253 streams in the territory of Louisiana that were navigable should forever remain so and free from any obstruction.

And the further act of Congress of Sept. 19th, 1890, chap. 907, sec. 7, in which it was declared that no State should have authority to obstruct any navigable stream; and Congress having so acted on said subject was supreme, and the legislature of Louisiana could not pass the law under which defendants claim in direct opposition to said acts of Congress.

Petitioner represents that said decision of the district court was against the rights of plaintiff claimed under said act of Congress, and the same was appealed from said district court to the supreme court of Louisiana and decided finally by said court on Monday, 18th day of December, 1893, and against the rights of plaintiff in error claimed under the Constitution and laws of the United States and the treaty by virtue of which Louisiana was admitted into the Union.

Petitioner alleges that said judgment of the supreme court of Louisiana, a copy of which is hereto annexed, is a final judgment of the highest court in the State, and the judgment of the same was recorded in the district court of Caddo parish for execution on the — day of ——.

Petitioner alleges that said decision of the supreme court was erroneous in not giving effect to said act of Congress, and it is assigned as error in the case that the said court did decide that the legislature of Louisiana can authorize the stoppage of Bayou Pierre with a dam in opposition to said act of Congress prohibiting same, and depriving her of her legal rights under said act of Congress and the Constitution of the United States, and that she is entitled to a writ of error to the Supreme Court of the United States with a supersedeas upon giving bond in the proper amount.

Wherefore, premises considered and the accompanying
254 record, petitioner prays that one of your honors will allow a writ of error to the Supreme Court of the United States and fix the amount and approve the bond in accordance with law and the rules of practice of the court, and for general relief.

(Signed) J. C. EGAN.

Order on Petition for Writ of Error.

The above and foregoing petition having been read and considered, it is ordered that the writ of error prayed for be granted, returnable in the Supreme Court of the United States, at the city of Washington, on the 27th day of January, A. D. 1894, according to law, upon petitioner's furnishing bond, with good and sufficient surety, in the sum of two thousand dollars, conditioned as the law directs.

New Orleans, December 28, 1893.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice.

Bond for Writ of Error.

Received January 8, 1894, and filed 9 January, 1894.

UNITED STATES OF AMERICA :

Know all men by these presents that we, Mrs. Lillian W. Egan, as principal, and J. C. Egan, as surety, of the city of Shreveport and State of Louisiana, are held and firmly bound, jointly and severally, unto T. McC. Hyman, clerk of the supreme court of the State of Louisiana, and A. Hart, H. B. Richardson, and F. M. Kerr, and his successors in said office, in the sum of two thousand dollars, lawful money of the United State of America ; for which payment, well and truly to be made to the said clerk or his successors, and to the said A. Hart, H. B. Richardson, and F. M. Kerr, we bind ourselves *in solido*, and each of our heirs, executors, and administrators and assigns, firmly by these presents.

Sealed with our seals and dated the fifth day of January,
255 in the year of our Lord eighteen hundred and ninety-four.

Whereas the said Mrs. Lillian W. Egan and husband have this day presented a petition to the honorable the Supreme Court of the United States, praying a writ of error to issue to the supreme court of the State of Louisiana in suit No. 11376 on the docket of the said supreme court of Louisiana, in which they are plaintiffs and the said A. Hart, H. B. Richardson, and F. M. Kerr are defendants:

Now, the condition of the above obligation is that we, the above-bounden Mrs. Lillian W. Egan and J. C. Egan, will well and truly pay to the said clerk or his successors in office or to the said A. Hart, H. B. Richardson, and F. M. Kerr, defendants, for the benefit of any and all persons interested in said suit all such damages as may be recovered against us in case it should be decided that the said writ was wrongfully obtained.

(Signed) MRS. LILLIAN W. EGAN, [L. S.]
Authorized by me, W. L. EGAN. [L. S.]
J. C. EGAN. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) THOS. H. MORRIS.
ALLEN D. MORRIS.

UNITED STATES OF AMERICA,
Western District of Louisiana, } *ss:*

Personally appeared J. C. Egan, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in Shreveport, Caddo parish, Louisiana, and is worth the full sum of two thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) J. C. EGAN.

Subscribed and sworn before me this fifth day of January, 1894.
[SEAL.] (Signed) J. B. SLATTERY,
Commissioner U. S. Circuit Court,
Western District of Louisiana.

(Endorsed:) Approved January 9, 1894. Signed Francis T. Nicholls, chief justice.

256 UNITED STATES OF AMERICA, *ss:*

To The President of the United States to the honorable the chief justice of the State of Louisiana and the associate justices thereof, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea *in* which — the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Mrs. Lillian W. Egan and husband and A. Hart, H. B. Richardson,

and F. M. Kerr, wherein was drawn in question the construction of the act of Congress by which Louisiana was admitted into the Union, and of section 5251 of the United States Revised Statutes, and of the act of Congress of September 19th, 1890, chapter 907, section 7, and of the Constitution of the United States, and the decision was against the title, right, privilege, and exemption specially set out and claimed under such statutes, treaty, and Constitution, a manifest error hath happened, to the great damage of the said Mrs. Lillian W. Egand and husband, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 28th day of December, in the year of our Lord one thousand eight hundred and ninety-three.

E. R. HUNT,
Clerk of the United States Circuit Court for the Eastern District of Louisiana.

[Endorsed:] Supreme court of the State of Louisiana. No. 11376. Mrs. Lillian W. Egan and husband *versus* A. Hart, H. B. Richardson, and F. M. Kerr. Writ of error. Filed 28 Dec'r, 1893. T. McC. Hyman, clerk.

257 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to A. Hart, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Lillian W. Egan and husband are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Lillian W. Egan, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28 day of December, in the year of our Lord one thousand eight hundred and ninety-three.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme court of the State of Louisiana. No. 11376. Mrs. Lillian W. Egan and husband *vs.* A. Hart, H. B. Richardson, and F. M. Kerr. Citation. Filed 15 Jan'y, 1894. T. McC. Hyman, clerk.

Marshal's Return.

Received the within citation on the 12th day of January, 1894, and on the same day, in the city of Shreveport, La., handed a copy hereof to A. Hart personally.

R. L. LUCKETT,
U. S. Marshal, Western Dist. La.

Sworn to and subscribed before me this the 22nd day of January, A. D. 1894.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE,
Clerk U. S. Circuit Court, Western District of Louisiana.

258 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to H. B. Richardson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Lillian W. Egan and husband are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Lillian W. Egan, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28 day of December, in the year of our Lord one thousand eight hundred and ninety-three.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] H. B. Richardson. R. Supreme court of the State of Louisiana. No. 11376. Mrs. Lillian W. Egan and husband *vs.* A. Hart, H. B. Richardson, and F. M. Kerr. Citation. Entered & filed Jan. 18, 1893. C. W. Buchanan, deputy clerk.

Sheriff's Return.

Received Wednesday, Jan. 10, 1894, and person-l-y, on the same day, 3.45 p. m., month, and year, I served a copy of the within citation *personally* on H. B. Richardson, defendant herein. Returned same day.

CARSON MUDGE,
D'y Sh'ff, Parish of Orleans, La.

Sworn to and subscribed before me this 12th day of January, 1894.

[Seal of P. Alphonse Rabouin, Notary Public.]

P. ALPH. RABOUIN, *Not. Pub.*

259 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to F. M. Kerr, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at New Orleans, wherein Mrs. Lillian W. Egan and husband are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mrs. Lillian W. Egan, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28 day of December, in the year of our Lord one thousand eight hundred and ninety-three.

[Seal Supreme Court of the State of Louisiana.]

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] F. M. Kerr. R. Supreme court of the State of Louisiana. No. 11376. Mrs. Lillian W. Egan and husband *vs.* A. Hart, H. B. Richardson, and F. M. Kerr. Citation. Entered & filed Jan. 18, 1893. C. W. Buchanan, deputy clerk.

Sheriff's Return.

Received Wednesday, Jan. 10, 1894, and personal-, on the 12th *12th* day of January, 1894, I served a copy of the within citation *personally* on F. M. Kerr, defendant herein.
Returned same day.

CARSON MUDGE,
D'y Sh'ff, Parish of Orleans, La.

Sworn to and subscribed before me this 12th day of January, 1894.

[Seal of P. Alphonse Rabouin, Notary Public.]

P. ALPH. RABOUIN, *Not. Pub.*

260 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, at New Orleans, do hereby certify that the foregoing 259 pages contain a full, true, and complete copy of the transcript of the proceedings had in the first judicial district court in and for the parish of Caddo, State of Louisiana, in a certain suit wherein Mrs. Lillian W. Egan and husband were plaintiffs and Archie Hart *et al.* were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiffs, which appeal is now on the files thereof under No. 11376.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set hand and affixed the seal of said court, at the city of New Orleans, this 17th day of January, anno Domini 1894, and in the one hundred and eighteenth year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

Certificate of the Chief Justice.

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of the State of Louisiana.

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana, at New

Orleans; that the signature of Thomas McCabe Hyman to
261 the foregoing certificate in the case entitled Mrs. Lillian W. Egan and husband *v.* Archie Hart *et al.* is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all his official acts as such.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 17th day of January, anno Domini 1894.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

Endorsed on cover: Case No. 15,492. Louisiana supreme court. Term No., 320. Mrs. Lillian W. Egan and husband, plaintiffs in error, *vs.* A. Hart, H. B. Richardson, and F. M. Kerr. Filed January 26, 1894.

165-188

Office Supreme Court, U. S.
FILED
JUL 7 1894
JAMES H. McKENNEY,
CLERK.

165-188

In the Supreme Court of the United States

NO. ~~1108.~~ 630 ~~320~~ 63

MRS. LILLIAN W. EGAN and Husband,

vs.

A. HART, Et al.

In the Supreme Court of the United States

NO. 1108.

MRS. LILLIAN W. EGAN and Husband,

vs.

A. HART, Et al.

The defendants in the above entitled case move the Court to dismiss the writ of error sued out herein, or to affirm the judgment complained of on the following grounds, viz :

FIRST: Because this Honorable Court is without jurisdiction in the premises, for this is not a suit arising under the Constitution or any law of the United States, and for the further reason that the judgment of the State court is not based on any Federal question.

With all due respect we think the record does not sustain this statement of the case. The plaintiff alleges that the placing of the dam across Bayou Pierre was a violation of the laws of the United States and the Act of Congress. That Bayou Pierre was a navigable stream, and it was beyond the authority of the Legisla-

ture to authorize the stoppage of the flow of water and injure and destroy the navigation of any stream in the State of Louisiana.

The defendants claimed, first, that the stream was not navigable, and second, that if it was navigable that it was within the bounds of the Legislature to authorize the stoppage of the flow of waters down its channel.

There was, therefore, a Federal issue presented for decision to the Court, and it passed upon said issue. The opinion of the Court contains the following statement, on page 15, of defendant's brief. "As to plaintiff's contention that Bayou Pierre is a navigable stream, we have carefully considered the voluminous testimony on that part of the case, and we are clear that the upper part of Bayou Pierre, in which the dam in question is situated, is not navigable, and that the navigation of even the lower part of Bayou Pierre, a considerable distance below the dam, is attended with many obstacles and difficulties. From Grand Ecore, where it (Bayou Pierre), enters the river to a point some miles below the junction with Tone's Bayou, a stream flowing out of Red River, Bayou Pierre has been frequently navigated by steamboats; but from the point of junction to the dam in question it has never been navigated and is unnavigable." The Court says further on that Bayou Pierre is wholly within the State, and the

authority of the Legislature over it is complete.

It will therefore be seen that the Court did not decide that Bayou Pierre was not a navigable stream. Indeed the testimony gave the names of the boats that had navigated its waters and the proof showed more than a thousand bales of cotton to have been transported at one trip by one of these boats. What it did decide was, that ~~where~~ where the dam was placed, Bayou Pierre was not nivigable for steamboats, and for some eight or ten miles below that point. Now, Bayou Pierre makes out of Red River just below Shreveport, and returns fnto Red River just below Grand Ecore, a distance of one hundred miles. This stream, which has always been navigated in every part except where the dam has been placed, and for some ten miles below it is, we think, under the protection of the Act of Congress, viz: Sec. 7, p. 454, chap. 907 of 1890, which declares that it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity of the channel of said navigable water of the United States, unless approved and authorized by the Secretary of War by virtue of any act of the Legislature of any State. The defendants claim in this case, and the Supreme Court so decide, that by virtue of an act of the Legislature of Louisiana, they have the right to fill the channel of a stream admitted to be navigable. The Act of Congress says it

shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity of the channel of said navigable waters of the United States. It cannot be denied that the dam across Bayou Pierre alters, modifies and destroys the navigation of Bayou Pierre. As Bayou Pierre is a navigable stream, this Act of Congress applies to it, and this act cannot be evaded by placing the obstacle at a point not navigable.

A Federal issue was here decided by the Supreme Court; for it decided that the Legislature had the authority to grant authority to fill up the channel of igable waters that were entirely in the State of Louisiana.

The first proposition, that this Court is without jurisdiction because there is no Federal issue involved, cannot therefore be sustained. This case, as presented to this Honorable Court, involves the construction of the Act of Congress and the authority of the Legislature to pass an act in conflict with said Act of Congress.

The jurisdiction of this Court exists over any case where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

In this case, validity of the statute of the State of Louisiana was drawn in question on the ground of it being repugnant to the acts of Congress and the laws of the United States and the Supreme Court decided in favor of its constitutionality. This case is then within the letter and spirit of the law conferring jurisdiction on this court.

The defendants refer to the case of Willamette Iron Bridge Company vs. Hatch 125 U. S. 117. The Court say for a perpetual injunction against the building of a bridge over a navigable river in a case where Congress has not passed any law which prohibits such building, is not a suit arising under any law of the United States. This case is totally inapplicable, because Congress has acted and the question is whether the act of the Legislature is repugnant to the act of Congress.

The plaintiff in this case, by the act of the defendant, has had her large and valuable property diminished in value. If the act was lawfully done, then they have no right to the injunction and no remedy. If the act of the Legislature, by virtue of which it is claimed that the act is lawful, is void because in conflict with an act of Congress, then the plaintiff has a right to prevent by injunction the unlawful injury of their property. The Code of Practice of Louisiana, Art. 296, gives the plaintiffs a right to a writ of injunction, when the de-

fendants are constructing within the bed of a navagable river or on its banks works which may prevent the navigation of such river or render more difficult, or prevent ships or other crafts from easily loading or unloading on the banks of such river.

The writers or injunction say to warrant relief in equity by a private citizen against a public nuisance, some special injury must be shown, aside from the general inconvenience to the public. High on Iujunctions, Sec. 533.

The plaintiffs show that by this unlawful obstruction, their property is more subject to overflow, and its market value diminished, and thus their injury.

The authorities referred to, 125 U. S. 117 and 119 U. S., 280 and 285, are not relevant to the issue in this case. These cases were both rendered before the act of 1890 passed by Congress, had been enacted, and therefore can give no light upon the proper construction of an act of Congress passed long since they were rendered. The court is therefore respectfully asked to refuse the motion of the defendants, and that the case be called and fixed for trial in its regular course.

J. C. EGAN,
FRED THATCHER.
Attorneys for Plaintiffs.

C. J. Boatner
of Counsel

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Office Supreme Court, U. S.
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This is a suit by injunction to restrain the construction of a dam across the channel of Bayou Pierre that would prevent the flow of water down that stream and destroy its navigation.

The plaintiff owns a plantatton in Caddo Parish, known as "Grigsby Island." Bayou Pierre, a navigable stream making out of Red River, flows past her plantation on the upper side. She alleges that Hart and others were about to build a levee across the channel of Bayou Pierre at one and a half miles from Red

River and about a quarter of a mile from the lowest point of her land. She alleges that defendants have commenced to close said bayou, and that it is a navigable stream and that the State has no authority to close it, and that the placing of said dam is illegal and will greatly damage her.

The above statements of the facts in this case are in the main not denied. The record proves them all to be true.

From a judgment of the Supreme Court of Louisiana against the plaintiff, this case has been brought up by a writ of error.

The Supreme Court of Louisiana in this case say: "Bayou Pierre is wholly within the State and the authority of the Legislature over it is complete." If this is the law of the land, then the plaintiff has no case, for BayouPierre is wholly within the State of Louisiana.

To maintain the above opinion, the Court refers to 13 A., p. 130. A casual examination of that case will show that no obstruction was placed in the stream. The Supreme Court in 13 A. say: "The proof is unanimous and clear that the two locks are a positive advantage to the Bayou and that without them the Bayou would be comparatively unnavigable."

In the 38 A., Goodwill vs. Police Jury, et. als., the Court in speaking of this case in 13 A. say: "The Court rested its conclusions very guardedly on the fact

well shown that the proposed works would not impede but would positively improve navigation on that stream." The other case in 34 A., 975, referred to by the Court to sustain that doctrine, was made in 1882, and, therefore, can throw no light upon the construction of an Act of Congress passed in 1890.

We think that the true doctrine on the power of a State to legislate over a stream wholly within its territory was enunciated by Chief Justice Marshall in the case of Wilson vs. The Blackbird Marsh Company, in 2 Peters, page 250. "The Act of the Assembly by which the plaintiffs were authorized to construct their dam, shows plainly that this is one of those many creeks passing through a deep level marsh adjoining the Delaware up which the tide flows for some distance. The value of the property on its banks must be enhanced by excluding the water from the marsh and the health of the inhabitants probably improved. Measures calculated to produce these objects, provided they do not come into collision with the powers of the General Government, are undoubtedly within those which are reserved to the States. But the measure authorized by this Act stops a navigable creek and must be supposed to abridge the rights of those who have been accustomed to use it. But this abridgment, unless it comes in conflict with the Constitution or a law of the United States, is an affair between the

Government of Delaware and the citizens of which this Court can take no cognizance. If Congress had passed any Act which bore upon this case; any Act in execution of the power to regulate commerce, the object of which was to control State Legislatures over those small navigable creeks into which the tide flows and which abound throughout the lower country of the Middle and Southern States, we should feel not much difficulty in saying that a State law coming in conflict with such Act would be void."

The defendants in this case say they are erecting this dam across the channel of Bayou Pierre by virtue of an Act of the Legislature, and the Supreme Court say that this Act of the Legislature of Louisiana is ample authority to stop a navigable stream that is wholly within the territory of Louisiana. The contention of the plaintiff is that any Act of the Legislature conferring the power on any person or persons to erect a dam across the channel of Bayou Pierre, is in conflict with an Act of the Fifty-first Congress, first session; Ch. 907 of 1890, section 7, which reads as follows: "That it shall not be lawful to build any wharf, dolphin boom, dam, nor breakwater, bulkhead, jetty or structure of any kind, outside established harbor lines, or in any navigable waters of the United States where no harbor lines are or may be established without permission of the Secretary of War in any

port, roadstead, haven, harbor, navigable river or other waters of the United States in such manner as shall obstruct or impair navigation, commerce or anchorage of said waters, and it shall not be lawful hereafter to commence the construction of any bridge, bridge draw, bridge piers and abutments, causeway, or other works, over, or in any port, roads, roadstead, haven, harbor, navigable river or navigable waters of the United States, under any Act of the Legislative Assembly of any State until the location and plan of such bridge, or other works, have been submitted to and approved by the Secretary of War; or, to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity of the channel of said navigable waters of the United States, unless approved and authorized by the Secretary of War. Provided, this section shall not apply to any bridge, bridge draw, bridge piers, and abutments, the construction of which has heretofore been duly authorized by law, be so construed as to authorize the construction of any bridge, drawbridge, bridge pier and abutments, causeway or other works under an Act of the Legislature of any State over any stream, port, roadstead, haven or harbor, or other navigable water not wholly within the limits of such State. Section 10, declares "that every person and every corporation which shall be guilty of creating or continuing any such unlawful

obstruction in this Act mentioned, or who shall violate the provisions of the last four preceeding sections of this Act, shall be deemed guilty of a misdemeanor and on conviction be punished," etc.

The defendants plead that the erection of a dam across Bayou Pierre and the destruction of this stream for commerce and navigation, is lawful because authorized by an Act of the Legislature of Louisiana. The decision of the Supreme Court so decided. If its decision be correct, then the State can authorize the destruction of navigation and commerce in any stream wholly within the territory of Louisiana. Any Act of the Legislature conferring such authority would be in conflict with the plain words and spirit of the Act of Congress above quoted. The Act declares it shall be unlawful to fill, or in any manner alter or modify the course, location, condition or capacity of the channel of said navigable water of the United States, by virtue of any Act of the Legislature of a State unless approved and authorized by the Secretary of War.

To prevent the flow of water down the channel of Bayou Pierre, and which has been shown to be of such quantity as to have afforded navigation for steamboats to where the dam was placed, must of necessity alter and modify the condition and capacity of the channel of Bayou Pierre and destroy it for navigation.

The Act of Congress having said that the erection

of a work like the one enjoined in this case by authority of any Act of the Legislature shall be unlawful, it must follow that the Act complained of was not lawful. The language of Chief Justice Marshall is therefore applicable here. The State law coming in conflict with such Act would be void." 2 p., 252.

Is Bayou Pierre a navigable stream?

From where Bayou Pierre makes out of Red River to where it returns near Grand Ecore, (the channel of Bayou Pierre) is more than one hundred miles.

This stream flows through Caddo, DeSoto, Red River and Natchitoches Parishes. The entire stream has been navigated by steamboats, except some fifteen miles. Some of the boats carrying from six hundred to a thousand bales of cotton.

The inhabitants living upon the banks of this stream have always used it as a means of transporting their produce to market and receiving freight from abroad. The names of the boats, the Captains who commanded them, and the capacity of the boats, were proven in the lower court.

The District Court that tried this case, and the Supreme Court, say that from Grand Ecore, where Bayou Pierre enters Red River, to a point some miles below its junction with Tones Bayou, a stream flowing out of Red River.

Bayou Pierre has been frequently navigated by steamboats, but from the point of junction to the dam in question, it has never been navigated and is unnavigable. It is undisputed that Bayou Pierre has been continuously used for the purposes of commerce, and that its waters, for the distance of eighty-five miles, have been traversed and used for and by steamboats.

The proposition advanced here is that if there be a point in a navigable stream that cannot be navigated, works may be erected there that will destroy its navigation.

The contention is that the Act of Congress is not broad enough to protect those streams from destruction of navigation in them, if the works are erected at a point not navigable.

We do not think such construction of the Act of Congress is warranted by the language used. The Act of Congress was made to protect the commerce of navigable waters of the United States, and for the protection of navigation without reference to where the obstruction should be placed; then does it impair in any manner the use of Bayou Pierre for navigation and commerce? The Statute prohibits any change of the channel capacity of a navigable stream.

It must be clear that the placing of a dam across the channel of Bayou Pierre will alter its channel capacity for navigation and largely diminish its capacity

for commerce by depriving it of the flow of so large a volume of water.

The prohibition against in any manner altering or modifying the condition or capacity of the channel of navigable waters of the United States, does not contain the proviso that it may be done if the work erected is placed at a point not navigable.

If the powers claimed for these parties are contained in any Statute of the State of Louisiana, and the Supreme Court says they are, then we say the Act is void for repugnance to the Act of Congress passed by the Fifty-first Congress in 1890. Sec. 7, p. 454.

The Act of Congress is the paramount law of the land, and it cannot be that the Act of the Legislature of Louisiana is complete authority for stopping up Bayou Pierre, when the Act of Congress says that the Act of the Legislature of a State is not sufficient without the consent of the Secretary of War.

Section 10. "Every person and every corporation which shall be guilty of creating or continuing any such unlawful obstruction in this Act mentioned, or who shall violate the provisions of the last four preceding sections of this Act, shall be deemed guilty of a misdemeanor and on conviction shall be punished," etc.

The right to an injunction in this case is given to the plaintiff by the provisions of C. P., of Louisiana.

The Supreme Court of Louisiana, in 38 A., p. 29, say: "The codal provisions of our practice touching injunctions, are broader and more comprehensive than the rules of the Chancery Courts, and include causes for injunctions that would not be sanctioned in a common law court. C. P., 298.

"When defendant is constructing, either within the bed of a navigable river or on its banks, works which may prevent the navigation or render it more difficult, an injunction may be granted. A party can always prevent by injunction the performance of an act, which if done, would give him a claim for damages." Carraby vs. Morgan, 5 N. S., 501.; Slaughter House Company vs. LaNeux, 30 A., 800.

C. P., 296. Injunction is a mandate obtained from a Court by a plaintiff prohibiting one from doing an act which he contends may be injurious to him or impair a right which he claims.

In the case of Ingraham vs. Police Jury, 20 A., 226, it was held that a private individual might enjoin the building of a bridge across a navigable stream.

In the case of Goodwill, et. al., vs. Police Jury of Bossier Parish, the plaintiff obtained an injunction and the same was maintained on alleging that they were residents of Minden, a town in Webster, an adjoining Parish, situated a short distance from the headwater navigation of Dorcheat Bayou which empties into

Lake Bisteneau; alleging that Mack's Bayou is a navigable stream and that it is in addition one of the principal sources of water for a feeder of Lake Bisteneau which affords to this section of country the only navigable highway to Red River. The true doctrine we think was enunciated in 5 N. S., 501., and affirmed in the 30 A., p. 800. A party can always obtain an injunction to prevent the performance of an act, which if done, would give him a claim for damages.

It is clear that as Bayou Pierre flowed past the plantation of the plaintiff and served as a drainage and to carry off the accumulated water in Red River, no individual had a right to destroy this drainage nor stop the flow of water down Bayou Pierre; C. C. 661. If, therefore, the Act of the Legislature, under which these defendants claim to act was void, as repugnant to the Act of Congress, then these individuals, defendants, were committing an illegal act that was injuring and destroying the property of plaintiff's; C. C. 2,315. Every act whatever of man that causes damages to another obliges him by whose fault it happened to repair it.

The contention of the defendants has been that these acts were legal and therefore there was no cause of action in law against them and no right to injunction.

It requires no authorities to show that one acting

under an Act of the Legislature that is void is acting without any authority. We think that it is clear that these defendants acted without any right and that these acts were illegal. We think it equally clear that the plaintiff had a right to resstrain them from these illegal acts and that as she has been injured she should have damages for these illegal acts, and the injunction maintained. It is true that in the case of Bass vs. the State of Louisiana, the Supreme Court of Louisiana, decided that Bass had no right of action for damages caused by the construction of a levee. They say the dilemma seems irresistable in this case. Either the Board of Engineers, the public agents of the State have acted within the scope of their mandate and authority, or they have not. If they have, then as they have carried out a valid law, neither they nor the State can be held responsible. If they have acted beyond that scope, their principal cannot be made responsible for their unauthorized acts, and they *are alone chargeable.*

Then defendants are therefore chargeable with all damages sustained by the plaintiff in this case, because their acts were unlawful and in violation of a public law of Congress.

The Supreme Court of Louisiana say in this case of Egan vs. Hart that she neither alleged nor shows any interest in the navigability of Bayou Pierre. Can

this proposition of law be true, viz: That no right of action for damages exists for an unlawful act that injures and destroys the property of another?

The foundation of the plaintiff's right of action in this case, is that the erection of a dam across Bayou Pierre is illegal and greatly damages her property. The reasons why the acts are illegal is because these defendants are acting under an Act of the Legislature that is repugnant to an Act of Congress.

"A party can always prevent by injunction the performance of an act, which if done, would give him a claim for damages. 5 N. S. 501; 30 A., 800.

If the Act is illegal and there is injury from it, the right of action is especially given by the C. C. of Louisiana. 2,315.

The Act of Congress having prohibited the erection of works that would in any manner injure or diminish the channel capacity of a navigable stream it was necessary for this plaintiff to make sufficient allegations and proof to show that these defendants were unlawfully stopping up Bayou Pierre, and she was thereby injured.

If she has done this, then we submit that under the plain letter of the C. C., she had an action of damages against these defendants, and that under the jurisprudence of this State and the express provisions

IN THE SUPREME COURT
OF THE UNITED STATES.

No. 1108. 320

OCTOBER TERM, 1893.

MRS. LILLIAN W. EGAN AND HUSBAND, Plaintiffs in Error,

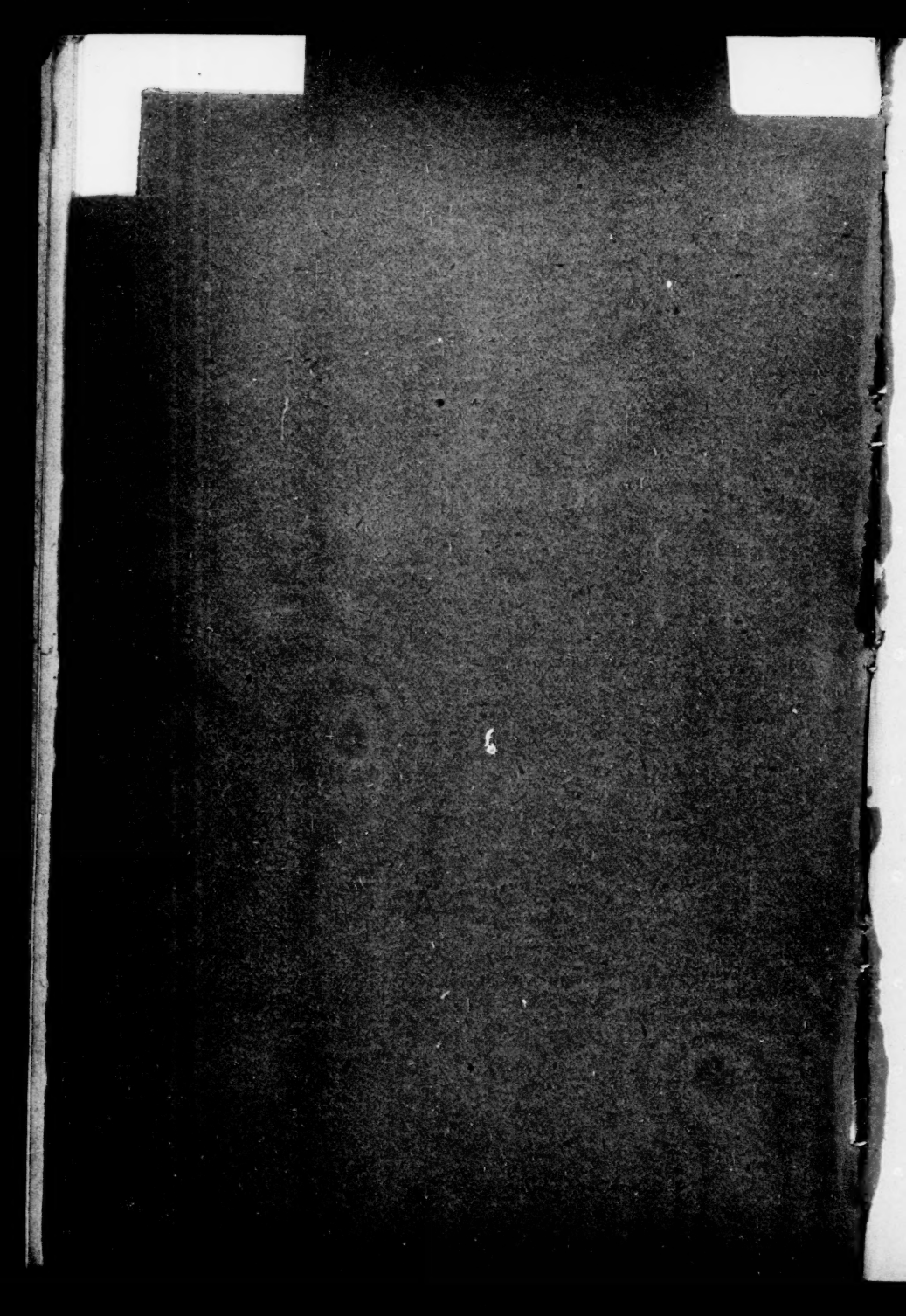
versus

A. HART ET AL, Defendants in Error.

MOTION TO DISMISS OR AFFIRM

—AND—

BRIEF OF DEFENDANTS.



IN THE SUPREME COURT
OF THE UNITED STATES.

No. 1108.

OCTOBER TERM, 1893.

MRS. LILLIAN W. EGAN AND HUSBAND, Plaintiffs in Error,

versus

A. HART ET AL, Defendants in Error.

In Error to Supreme Court of the State of Louisiana.

MOTION TO DISMISS OR AFFIRM.

Now come the defendants in the above entitled suit and move the Court to dismiss the writ of error sued out herein, or to affirm the judgment complained of, on the following grounds, viz :

First—Because this Honorable Court is without jurisdiction in the premises, for the reason that this is not a suit arising under the Constitution or any

law of the United States, and for the further reason that the judgment of the State Court is not based on any Federal question.

Secondly—Because if any Federal question was decided by the State Court, the decision is manifestly correct, and the question on which the jurisdiction depends is so frivolous as not to need further argument.

Wherefore, defendants pray in the alternative that said writ of error be dismissed, or the judgment in question be affirmed, the plaintiffs in error to pay all costs.

A. H. LEONARD,
LAND & LAND,
Attorneys for Defendants.

BRIEF ON MOTION.

The pleadings and issues involved in this controversy are fully set forth in the opinion and decree of the Supreme Court of Louisiana, incorporated in the record, and appearing as an appendix to this motion and argument.

This is an injunction suit to restrain the construction of a dam across Bayou Pierre, an outlet of Red river, in the State of Louisiana, and to recover $6,000 damages.

The original petition raises questions purely of fact and of State law.

By an amended petition plaintiffs allege that Bayou Pierre is a navigable stream of the United States, and that, under the Constitution and laws of the United States, the State has no power to close it.

The District and Supreme Courts both found that the upper part of Bayou Pierre, where the dam is located, is not navigable, but "is nothing but a high-water outlet, going dry every summer at many places, choked with rafts, and filled with sand, reefs, etc."

It was also found that the lower part of Bayou Pierre—below its junction with Tone's bayou, another stream flowing out of Red river—and for a considerable distance below the dam, has been navigated by steamboats, but that the navigation is attended with many obstacles and difficulties. It was also found that Bayou Pierre is wholly within the State of Louisiana.

The State Court held that the dam in question is a part of the public levee system of the State, and that its construction by Defendants was clearly authorized by the Constitution and laws of the State.

On the issues raised by the amended answer, the Court held, first, that, as a matter of fact, Bayou Pierre, where the dam is located, is not a navigable stream; and, secondly, that, being wholly within the limits of the State, the authority of the Legislature

over it is complete, even conceding that it is a navigable stream.

We respectfully submit that the record raises no Federal question, for the following reasons:

I.

In the case of Willamette Iron Bridge Company vs. Hatch, 125 U. S., 1-17, this Court held that a suit for a perpetual injunction against the building of a bridge over a navigable river in a case where Congress has not passed any law which prohibits such building, is not a suit arising under any law of the United States, and that the Act of Congress admitting Oregon as a State does not refer to physical obstructions, but to political regulations, which would hamper the freedom of commerce. The suit was ordered to be dismissed, because it "was not a suit arising under any law of the United States."

II.

In finding that Bayou Pierre is not a navigable stream, the State Court decided merely a question of fact, which excluded the consideration of any Federal question applicable to navigable streams, and furnished an independent ground broad enough to maintain the judgment. Beatty vs. Benton, 135 U. S., 244. Where the question is merely as to the application of a statute of the United States to the case, no Federal question arises. Cameron vs. United States, 146 U. S., 533.

If, as stated by the State Supreme Court, plaintiff "has neither alleged nor shown any interest in the navigability of Bayou Pierre," this of itself is a ground broad enough to maintain the judgment; for it is well settled that an injunction will not be granted to prevent an injury to a navigable stream at the suit of an individual, who is not engaged in navigating the same. Foster's Federal Practice, § 223, Note 7. Courts do not sit to decide moot questions.

It is finally submitted that, admitting for the sake of argument, that there is a Federal question in the case, and that it was decided by the State Court, it is manifest that it was correctly decided, in accordance with the rulings of this Court in 125 U. S., 1-17, and 119 U. S., 280-285.

It is plain that there is no law of the United States under which plaintiff can claim a vested right in the navigation of streams in the State of Louisiana, and that the writ of error herein was sued out for delay.

It is therefore submitted that the motion to dismiss should be sustained, or, if not well taken, the judgment should be affirmed with costs. 105 U. S., 3; 132 U. S., 210.

Respectfully submitted,

A. H. LEONARD,
LAND & LAND,
Attorneys for Defendants.

APPENDIX.

Opinion and Decree of the Supreme Court of Louisiana in the Case of Egan et al vs. Hart et all, No. 11,376.

SYLLABUS by the Court.

1.—The State having located a public levee, and awarded to a contractor the work of constructing it, the fact that third persons have bound themselves to the contractor to supplement the contract price by subscriptions of money, does not impair the public character of the work.

2.—Act No. 74 of 1892, creating the Caddo Levee District, does not impair the power of the governor, under Act No. 33 of 1879, to contract for public levees in said district, to be paid for with moneys in the general engineer fund.

3.—The board of state engineers have the power to close Bayou Pierre by a dam which is part of the public levee system of the State. The upper part of Bayou Pierre is not navigable. Besides, that stream is wholly within the State, and the authority of the Legislature over it is complete.

4.—The Act of Congress admitting Louisiana into the Union does not forbid the Legislature from closing by a dam such a stream as Bayou Pierre.

5.—The State, in locating the public levees, acts in the exercise of its police powers, and private injury resulting therefrom is *damnum absque injuria*.

Parlange, J.—This is an injunction suit to restrain the construction of a dam across Bayou Pierre. Plaintiff owns a plantation in Caddo parish, known as "Grigsby's Island," and which is bounded on one side by Red river, and on the other sides by bayous or streams connecting with Red river. Bayou Pierre bounds her plantation in the rear. She claims that A. Hart, and H. B. Richardson, pretending to act as chief engineer of the board of State engineers, and F. M. Kerr, pretending to act as engineer of said board, have combined and conspired to build a dam across Bayou Pierre at a distance of one mile and a half from Red river, and of about a quarter of a mile from the nearest point of her land. She alleges that the defendants have announced their intention to close Bayou Pierre, and have actually begun the work necessary to carry out their purpose. She alleges that defendant Hart was employed almost wholly by private persons to do said work; that the necessary funds were supplied by interested private parties, who, for their own selfish interests, and from no public motive, have entered into the combination to dam said bayou; that any pretended contract between

Hart and the State is a mere pretext or subterfuge, and was intended as a cloak to cover their illegal acts, and with the hope to shield themselves from the legal consequences of their wrongful acts. She avers specially that if the acts of defendants are claimed to be done by virtue of any contract with the State or its officials, and in accordance with law, the board of engineers has no power to close such a natural outlet as Bayou Pierre is; and she says that, since the passage of Act No. 74 of 1892, the board of engineers is without power to advertise for bids, and to let contracts, for building public levees in Caddo parish, and for closing Bayou Pierre, but that said power is lodged exclusively in the board of commissioners of the Caddo levee district, and that, if the board of State engineers has let a contract for closing Bayou Pierre since the passage of Act No. 74 of 1892, it has done so without authority from the district commissioners; that, if the authority is claimed under Section 18 of Act No. 74 of 1892, said section is unconstitutional. Plaintiff avers that the effect of closing Bayou Pierre will be to increase the volume of water in Red river, thereby rendering her lands more liable to overflow, and requiring her to add to her own levees, already built; that she will be compelled to surround her plantation with high levees, costly to maintain, and which would leave her plantation as a basin in which

rain and sipeage water would stand. She alleges damages to the amount of $6,000, of which $1,000 are claimed for attorney fees, and $5,000 for the depreciation in the rental and selling values of her plantation, and the disturbance of her tenants and laborers. She prays for the damages claimed, and for the removal of the dam.

By an amended petition, plaintiff avers that Bayou Pierre is a navigable stream, and that the State has no power to close it. The State intervened, and alleges that the work enjoined is a part of the public levee system; that the board of State engineers, in the discharge of its duties, recommended the closing of Bayou Pierre, and the continuation of a public levee, from the hills north of and across Bayou Pierre, to the Dixie plantation, a distance of two miles and three-quarters, in order to protect the adjacent country from overflow, and as the basis of a system of levees to be built as rapidly as possible; that bids for said public work were advertised for, according to law; that the bid of defendant Hart was duly accepted, and a contract was made with him, by the governor, and that Hart gave bond and security for the faithful performance of the work; that the contract price is payable out of the general engineer fund, over which the district board of commissioners has no control, and that the board of State engineers

has the power, under the laws of the State, and especially under Act No. 60 of 1886, to determine in what part of Caddo parish its pro rata of said fund should be expended; that said board of engineers has the exclusive power of locating all levees in the Caddo levee district, and of determining what outlets shall be closed or opened; that such power was not abridged by Act No. 74 of 1892, but, on the contrary, was made exclusive by section 18 of said act; that said act makes it the duty of said Caddo district levee board to provide the means to carry out the recommendations of said board of engineers by taxation, but that these means are intended to be in aid of the general engineer fund. The injunction was dissolved on bond. Defendants answered, making substantially the same averments as the State.

After trial, the district judge dissolved the injunction and dismissed the suit, condeming plaintiff to pay Hart $850 as damages, of which $250 are for attorney fees. Plaintiff has appealed, and the defendant Hart, in his answer to the appeal, prays that the attorneys' fees be increased to $1,000.

Plaintiff's allegations that the closing of Bayou Pierre is the result of a combination and conspiracy for private interests, are clearly and abundantly disproved by the record.

The work complained of is a public work, under-

taken, in accordance with law, by the agents of the State—the State engineers. It is a part of the public levee system of the State. It was being carried on by the State engineers in the performance of the duties imposed upon them by law. The work was surveyed. It was reported and recommended to the governor. The governor advertised for proposals to do the work. It is clear that no possible damage could have resulted to plaintiff from the mode in which Hart obtained the contract, and that, if she has suffered any injury, it was not because of the mode of awarding the contract, but because of the acts done under the same.

This is not a case in which a requirement of law, provided in the interest of a person, has not been observed

The fact that private persons bound themselves to the contractor Hart to supplement, by subscription of money, the price which he was to receive from the State, affects, in no manner, the public character of the work. These were the obligations of third parties to Hart. They did not, and could not, affect, in the least, the control of the State over the work, nor change or impair the public nature of the undertaking. The State was the beneficiary of these private subscriptions, as doubtless they contributed to enable Hart to undertake the building of nearly

three miles of levees for the low price set out in his contract with the State; but the work itself remained absolutely a public work. Speaking of the nature of the work, the district judge says: "It is a public work, planned and located by State authority, and is a part of a system of levees ordered by the State for the prevention of overflows. It is the initial point of a line of levees, the propriety, location and construction of which have been determined by the State, acting through the State board of engineers, its accredited and duly authorized agents. It begins on the highlands, on the west bank of the bayou, and extends thence across the bayou to Hart's island, and from there to Dixie plantation, on Red river."

The United States government has contributed $4,000—a sum equal to the price of Hart's contract with the State—towards the cost of construction of the line of levees of which the dam in question is a part. Manifestly, the claim that such a work, undertaken by the State with the aid of the general government, is the work of private persons for private and selfish motives, is absolutely without foundation.

Plaintiff contends, as stated, that since the passage of Act 74 of 1892, which created the Caddo levee district, the right and power to advertise and contract for levees in Caddo parish are exclusively vested in the district board of commissioners. This position

is untenable. There is no authority to support it. The constitution makes it the imperative duty of the General Assembly to maintain a levee system in the State. Article 214 of the Constitution provides that the General Assembly may divide the State into levee districts, and provide for the appointment or election of levee commissioners, who shall in the mode and manner to be provided by law, have supervision of the erection, repairs and maintenance of the levees in the district, and to that effect they may levy a limited tax on the taxable property within the district. It is clear that the creation of levee districts is left to the discretion of the General Assembly. It is equally clear that the method and manner in which the commissioners, when created, are to have supervision of the levees within the district, are also left to the discretion of the General Assembly. Peart vs. Levee District, 45 La., 422. A levee district is one of the instrumentalities which the General Assembly may use in performing its duty of maintaining a levee system in the State. The constitution does not provide, either expressly or by implication, that, when a levee district is created, the General Assembly shall be powerless to employ any other instrumentality than that of the levee district within its limits. The general engineer fund, created by Act 33 of 1879, has been frequently and fully recognized by the General

Assembly since the adoption of the present constitutution. Under Act No. 33 of 1879, the power of the governor is clear to contract for building levees with moneys in the general engineer fund.

Equally clear is the power of the board of State engineers, acting within their official scope and duty, to cause to be closed the bayou across which the dam in question was being constructed at the time this suit originated. It is a necessary incident of their powers and duties under said Act No. 33 of 1879.

The action of the General Assembly would have been futile, indeed, if, with full knowledge of the topography of the State, it had charged the State engineers with the great duty of protecting the alluvial part of the State from overflows, but had withheld from them the power to build levees across bayous and sloughs. Act No. 78 of 1886 assumes, as a matter of course, that the board of State engineers has the power, and said act provides certain requisites to be observed in constructing levees across bayous and sloughs. But in the instant case, if any doubt could have existed as to the power, section 18 of Act No. 74 of 1892, creating the Caddo levee district, would have removed it, by providing that the State engineers are authorized "to survey and locate, repair or remove or change any and all levees in the district, and are specially authorized to cause to be closed by

levees, dykes, or otherwise, such outlets, bayous or sloughs, or to open the same, as in their judgment may be necessary to carry out the object of the act, and are solely charged with the responsibility of the location of all levees in said district." This section violates no provision of the constitution.

As to plaintiff's contention that Bayou Pierre is a navigable stream, we have carefully considered the voluminous testimony on that part of the case, and we are clear that the upper part of Bayou Pierre, in which the dam in question is situated, is not navigable, and that the navigation of even the lower part of Bayou Pierre, a considerable distance below the dam, is attended with many obstacles and difficulties. On this point, the district judge says: "From Grand Ecore, where it (Bayou Pierre) enters Red river, to a point some miles below its junction with Tone's bayou—a stream flowing out of Red river—Bayou Pierre has been frequently navigated by steamboats, but, from the point of junction to the dam in question, it has never been navigated and is unnavigable. Between these two points it is nothing but a high-water outlet, going dry every summer at many places, choked with rafts, and filled with sand, reefs, etc. It has no channel. In various localities it spreads out into shallow lakes, and over a wide expanse of country, and is susceptible of being made navigable, just

as a ditch could be, if it were dry, deep and wide enough, and kept supplied with a sufficiency of water." We fully concur in this finding. Besides, Bayou Pierre is wholly within the State, and the authority of the Legislature over it is complete. Hamilton vs. Railroad Co , 34 La An., 975; Boykin vs. Shaeffer, 13 La. An., 129.

There is no force in plaintiff's contention that the act of Congress admitting Louisiana into the Union forbids the General Assembly from closing by a dam such a stream as Bayou Pierre. Boykin vs. Shaeffer, 13 La. An , 129; Hamilton vs. Railroad Co., 119 U. S., 285; Bridge Co., vs. Hatch, 125 U. S., 1.

In Peart vs. Levee District quoted above, and in the cases therein cited, this Court has said that, in locating and building her public levees, the State acts in the exercise of her police power, "and that private injury resulting from the legitimate exercise of this legal right is *damnum absque injuria*, to which the individual must submit as a sacrifice to the public safety and welfare." The doctrine applies to the instant case. Plaintiff's plantation is an island surrounded by levees, except where the banks are sufficiently high without them. There is evidence strongly indicating that her plantation is, by nature, in the shape of a basin, the land sloping on all sides to the center. However this may be, it seems clear

that the condition of her property, even before the building of the dam, must have been highly unfavorable to drainage. Whether the effect of the dam, at the distance of a quarter of a mile from her property, will be to seriously damage it, is in a great measure conjectural. She has neither alleged nor shown any interest in the navigability of Bayou Pierre. However, whether she has suffered damage or not, she is not entitled to the relief she prays for.

The appellee, Hart, prays for an increase of the damages awarded, but we see no reason to disturb the finding of the District Judge. Judgment affirmed at plaintiff's cost. (Reported in Southern Reporter, Vol. 14, No. 5, 244, 1894.)